1544.

SUPREME COURT OF THE UNITED STATES.

No. 156.

RICHARD H. HENDRICKSON, COMPLAINANT AND APPELLANT,

vs.

SAMUEL L. HINCKLEY.

APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR OHIO.

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GIDEON, print.

At a circuit court of the United States of America, within and for the district of Ohio, begun and held at the city of Columbus, on the third Tuesday, being the nineteenth day of October, in the year of our Lord one thousand eight hundred and fifty-two, and of the independence of the United States of America the seventy-seventh, before the honorable John McLean and the honorable Humphrey H. Leavitt, judges of said court, among other proceedings had were the following, to wit:

RICHARD H. HENDRICKSON
vs. } In chancery.
SAMUEL L. HINCKLEY.

Be it remembered, that heretofore, to wit, on the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-one, came the said complainant, by his solicitor, and filed in the clerk's office of said court a certain bill in chancery against the said defendant, in the words and figures following, to wit:

To the honorable the judges of the circuit court of the United States, within and for the State of Ohio, in chancery sitting:

Complaining unto your honors, your orator, Richard H. Hendrickson, represents that about the month of November, 1841, he became acquainted with one Anthony B. Allen, otherwise known and designated as A. B. Allen, who represented himself as the agent of one Samuel L. Hinckley, of the State of Massachusetts, in the business of importing into and selling in this country thorough-bred stock, hogs and cattle of the Berkshire and other breeds; that about that time said Allen, as Henckley's agent, brought to Ohio from New York, as he said, a number of hogs for sale, which he represented of the thorough-bred Berkshire blood, but which your orator charges were not imported as represented at the time by said Allen; and your orator also represents, that said Allen, by various enticements, inducements, representations and promises, induced your orator and one Andrew Campbell to purchase some of said hogs of him, as hereinafter more particularly detailed, none of which inducements, promises, &c., were ever fulfilled by said Allen, as agent or otherwise, nor by said Henckley as principal, in whole or in part. The inducements, promises, and representations of the said Allen, as such agent, before and at the time of the sale of said hogs to your orator and Campbell, and on which your orator and Campbell consented to make said purchase, were, that the hogs by your orator and Campbell then about to be purchased, and which then were purchased, (except some few otherwise named in the memorandum hereinafter referred to,) were imported by him, the said Allen, as the agent of said Henckley, and that all so purchased were thorough-bred Berkshire hogs, and that they were healthy and good

breeders. Another of said Allen's representations and promises then made was, that said Henckley and he would discontinue a breeding establishment which they, or one of them, were then carrying on at Black Rock, in the State of New York, and that they would give to your orator and Campbell the benefit and profit of supplying all demands which might be sent to said Black Rock establishment for stock; that your orator and Campbell should have the sole benefit of breeding and selling this kind of stock without any competition of them, the said Allen or Henckley, and that they would discontinue the business. And another of said Allen's representations and promises were, that he, Allen, was then about to become the editor of an agricultural paper, called the "American Agriculturist," and that through the medium of said paper he would specially commend (as he said he could in good faith do) to the favor of the agricultural public of the country at large this stock, and thereby give to it a character throughout the country which would enable your orator and Campbell to make large sales of it, and (as the said Allen said he could do) enable your orator and Campbell to realize large fortunes out of it. And another, and the leading inducement and promise made then to your orator and Campbell, by the said Allen, to induce them to buy said stock, was, that he would take hogs and pigs of the offspring of said stock then by them about to be purchased, to pay the purchase money thereof, and that this and this alone should be the means by which your orator and Campbell should pay him for said hogs. Now your orator avers, that these were the promises, inducements, and representations made by the said Allen, as the agent of said Henckley, to induce your orator and Campbell to purchase said hogs, and on which they did purchase them, and without which they would not have purchased one dollar's worth of them. But your orator and Campbell, relying on them as made in good faith, and believing at the time that they would be performed by said Allen and Henckley, about the 25th of November, bought of said Allen, as agent as aforesaid, the following stock, at the following prices:

One-third of the Berkshire boar Windsor Castle -	$333 33
" " " " Earl Craven -	100 00
" " " sow Sultana - -	166 67
One imported Berkshire boar, Buckland - -	100 00
Two " " sows - - - -	300 00
Three American " sows - - - -	450 00
Twelve " " " - - - -	550 00
	$2,000 00

For which said Allen afterwards gave your orator and Campbell a bill dated the 21st December, 1841, a copy of which is herewith filed, marked A, and made a part of this bill of complaint. That shortly afterwards, your orator and Campbell purchased of said Allen, as agent as aforesaid, another sow, at the price of one hundred and

twenty-five dollars, making in the whole purchase the amount of twenty-one hundred and twenty-five dollars; and your orator and Campbell, on the said 21st day of December, at the urgent request of said Allen, gave him in settlement of said account their two joint and several notes for one-half of said amount each, or it may be one of them was for eleven hundred and twenty-five dollars, and the other for one thousand; and in a few days afterwards, said Allen requested of your orator and Campbell that one of said notes should be divided into two smaller ones. Your orator and Campbell could see no necessity for this under the arrangement and promise of said Allen aforesaid as made when they purchased, and therefore, at first, declined to do so; but said Allen assured your orator and Campbell that it would be in no way prejudicial to them in making the notes smaller, and that he only wanted the notes to let his principal, Henckley, see that he had disposed of the hogs, and to whom he had sold them, and that the notes should never, in any event, be used in any way inconsistent with the arrangement between them as to the means of payment, and that he would take them, payable to himself, as were the others, and would not transfer them to any one. Your orator and Campbell relying on these assurances of Allen, on the 1st of January, 1842, made their other two joint and several notes payable to Allen one year after date, for five hundred, and six hundred and twenty-five dollars, respectively, copies of which notes are also hereto attached, marked Nos. 1, 2, and 3. Your orator further represents, that many of said hogs were diseased, and some of them were impotent when the said Allen sold them to your orator and Campbell, and that many of them died during the same year of the purchase of some disease, the character of which your orator never could learn; and your orator charges, that the said Allen knew that said hogs were diseased, and some of them impotent when he sold them to your orator and Campbell, and your orator and Campbell, in fact, thought at the time that they were diseased, from their shaggy appearance, and so told said Allen, but he assured your orator and Campbell that it was not so; on the contrary, that the hogs were healthy and in good breeding order; that their shaggy appearance was owing to their long sea voyage, and the using of salt water in cooling them off during the voyage. Your orator not knowing but that such might be the case, and relying on Allen as a man of integrity, bought them notwithstanding this shaggy and diseased appearance; but your orator is satisfied that this representation of Allen was a cunningly devised deception to allay your orator and Campbell's suspicion of said hogs, and effect a sale of them to your orator and Campbell. And your orator further represents, that of these imported hogs so by your orator and Campbell purchased of said Allen, one named Windsor Castle, at and before the sale to your orator and Campbell, was represented by said Allen as a young and vigorous boar, when in truth and in fact, as your orator some months afterwards found out, was very old, and had had his tusks sawed off, the more effectually to conceal his extreme age. This hog was valued in the sale to your orator and Camp-

bell at one thousand dollars, their interest being one-third of that sum, and he, in the course of some eighteen or twenty months, died of old age as your orator believes, and so charges. Your orator admits, however, that this was the best of all the hogs he and the said Campbell got of said Allen. Another of said hogs, named Earl Craven, valued in the sale to your orator and Campbell at three hundred dollars, the one-third of that sum being the interest of your orator and Campbell in said hog, was entirely impotent, and never got a pig in the whole time your orator and Campbell had him, though he had some fine sows stinted to him. This hog was also highly recommended to your orator and Campbell by said Allen as a fine breeder, yet your orator believes that said Allen knew at the time he sold him to your orator and Campbell that he was impotent. Your orator further represents, that this hog was not only entirely worthless, but was a very great injury to your orator and Campbell, by reason of his universal failure to breed, which was calculated to destroy, in a great degree, the confidence of the public in the character of your orator and Campbell's other stock, which they had purchased of said Allen—a result which really occurred greatly to their damage. In addition to these, there were several others which died in the course of eighteen months: one, named Quadroon, died about November, 1842; another, named Rictemny, died about September, 1842; another, named Holly, died about December, 1842; another, named Elfrida, died about January, 1843; and another, of the Shaker breed, died about October, 1842, and about this same time there were some four others died, the names of which your orator cannot now recollect. There were, also, a number of the sows, but how many your orator cannot now say, which were entirely impotent, either from having been spayed, or on account of some disease, the former of which your orator verily believes was the real cause of their failure to breed; and of these, a number, together with a great number of the offspring of those which did breed, died during the time your orator and Campbell had this stock. Your orator could never ascertain what was the disease of which so many of these hogs died. It seemed to be a disease entirely dissimilar from any disease of stock which he had ever before seen, and he has always been unable to account for it, unless it was, as he is inclined to believe it was, some hereditary complaint not usual to hogs in this country.

Now your orator charges, that neither the said Allen nor his principal, Henckley, have ever performed any of said Allen's promises, agreements, or representations; but on the contrary, your orator charges, that the said Allen grossly deceived your orator in representing a part of said stock as imported, when in truth, as your orator is informed and believes, none of it was imported; and in representing it all as healthy and good breeding stock, when in truth a large number of them were diseased and impotent; and in promising to discontinue the breeding of stock at Black Rock, and that they would send all orders on them for stock to your orator and Campbell, when in truth and in fact, as your orator is informed and believes, they did not discontinue

breeding at Black Rock, nor did they send to your orator and Campbell any orders for stock, except for four pigs, which were sent to said Allen, although, as your orator is informed and believes, and here charges, the said Allen or Henckley had numerous orders for Berkshire stock from the Canadas and various States of this Union; and in representing to your orator and Campbell that he only wanted said notes to show his principal, Henckley, and in agreeing that they should not be used for any purpose inconsistent of the agreement aforesaid, when in fact he endorsed and transferred the said notes to Henckley for the purpose, as your orator believes, of enabling said Henckley in his own right to sue on them, and compel your orator and Campbell to pay the same in money, when, according to the agreement aforesaid, they were to be paid out of the offspring of the hogs for which they were given; and in agreeing to recommend said stock through the medium of said agricultural paper, which he was then about to become, and did become, the editor, when in truth, as your orator believes, he never in any manner recommended said stock by a single paragraph. Your orator believes and charges, that this was a trick to inspire your orator and Campbell with the idea of becoming the chief stock breeders of the country, which in fact the said Allen succeeded in, for your orator and Campbell believed from these strong assurances and favorable promises of the said Allen, and so continued to believe with the utmost confidence, until their anticipations were afterwards dissipated by the failure of the said Allen and Henckley to abide by the said Allen's promises and agreements, and by the almost total failure of the stock bought of said Allen as aforesaid. Your orator cannot recollect the many and oft-repeated expressions of enthusiasm used by the said Allen in reference to this enterprise, in which your orator and the said Campbell were about to engage, but he gives the following language held by the said Allen in a letter to said Campbell, dated about the 27th of November, 1841, but which for some reason does not bear the signature of said Allen, though the whole of it is in said Allen's handwriting: "With myself at the head of a wide-spread agricultural paper, Mr. Mahard's extensive pork-packing connexions and business, your good opinions and connexions, and, above all, friend Hendrickson's action, we can drive a bigger team than has ever yet been harnessed in the west, and it shall not be only for this year but for ten years to come; and I don't care if ten thousand Berkshires were brought from England, and ten thousand bred here, the splendid stock got here by those great boars will take precedence, and command any reasonable price for any number that can possibly be bred." This however is but one of many of said Allen's expressions in regard to this enterprise, for always he spoke in the same language of encouragement and positive assurance; and your orator avers, that these assurances were a leading and controlling motive to induce your orator and Campbell to enter upon this stock enterprise, and they were all made by the said Allen, as your orator verily believes, in view of the then failing popularity of this stock in England, of the approach of the same state of

things in this country, all of which the said Allen had the opportunity of knowing at the time, and as your orator believes he in fact did know, but which your orator and Campbell did not know till it was too late to disembarrass themselves from the condition into which they had been placed by the purchase. So that by these frauds, deceptions, and false representations of said Allen, your orator believes he should have been avoided of all responsibility on said notes, for they were void for the fraud of procuring them, and for the entire failure of the consideration for which they were given, as he verily believes. Notwithstanding the facts above detailed, however, the said Henckley, or the said Allen in the name of Henckley, on or about the 21st day of April, 1848, suit on said notes on the law side of this court, and subsequently about the 17th day of October, 1850, procured a judgment against your orator and said Campbell for the amount of the same, with interest, or for the sum of twenty-three hundred and eighty-six dollars and eleven cents, and also his costs in that behalf expended, amounting to the sum of forty dollars and thirty-four cents, as an exemplified copy of the record of said cause will show hereto attached, marked D, and made part of this bill. The defence of said suit devolved upon your orator, both because he was more conversant with the facts involved, and because of the feeble health of said Campbell; and in preparing their defence, your orator relied on the frauds and misrepresentations of said Allen in procuring said notes, and the failure of the consideration for which they were given, as abundant and ample ground of defence under the advice of counsel. Your orator frequently conferred with L. D. Campbell, one of his attorneys, in reference to the said cause, and frequently spoke to him of the claims which your orator and said Andrew Campbell had against the said Henckley, as hereinafter specifically set forth; but the said Campbell, attorney, regarded the defence pleaded as so amply sufficient as that neither he nor your orator ever thought it necessary to exhibit said demands against said Henckley as matter of defence, could it even have been done consistently with the defence made as aforesaid. Indeed, your orator always believed, and still believes, that in justice and equity he and said Campbell should not have been obligated to pay said notes. On the trial of said cause, however, your orator represents that the plaintiff's counsel read in evidence certain letters from your orator's co-defendant as to the character of said hogs, on which letters, as your orator is informed and believes, the jury in said cause rendered their verdict for the plaintiff.

Your orator avers, that not until the hearing of said letters read on the trial did he know that any such had been written, nor had he the most remote idea that said Campell could have written such letters about said stock; indeed your orator avers, that said Campbell, both removed as he was from where the hogs were, and being engaged as he was in the prosecution of a large practice as a physician, could not, and did not, know the true condition of said stock; that in fact he did not see it for months at a time, after some few months after the purchase,

and then only casually as he might be passing by your orator's farm in the course of his practice. Your orator avers, that he alone had the control and care of said hogs; that he had it on his farm and was with it personally, devoting his time and personal attention to it, and yet he could only ascertain the true quality and character of it by experience, and after such a lapse of time as was sufficient to discover its defects, whilst Campbell was devoted to his professional business several miles distant from where the hogs were. Your orator admits, that until time had developed the character of said stock, he was highly encouraged to believe all that said Allen had represented respecting it, and doubtless from time to time so expressed himself to said Campbell; but so soon as it was apparent that it was destined to prove a failure on account of disease and impotency, he always expressed himself to said Campbell as exasperated at said Allen for the imposition he had practised upon them. Now, your orator submits, whether under such circumstances he is, by the sudden production of such letters, written as they were by one not acquainted with the facts about which he pretended to speak, and which by the very nature of circumstances can be but the speculations of a theorist without personal and practical knowledge of the subject matter, be forever concluded from having his just and equitable rights administered to him. Your orator avers, that the said Allen knew that said Campbell had no care or personal management of said hogs; that he was not with them or about them, and that he was always busily engaged in a large practice as a physician several miles from where said hogs were kept, and, knowing the facts, he chose to direct his correspondence to said Campbell rather than to your orator, the more effectually to circumvent your orator and said Campbell in the fraud he had already commenced. Now your orator avers, that at the time of the commencement of said suit at law, he and said Campbell had a just, fair, and legal offset against said notes, even if they had been bona fide and honest obligations against your orator and said Campbell, which offset consisted of cash advanced to said Allen, agent as aforesaid, and money paid out for the use of said Henckley at said Allen's request, for pigs sold and delivered to said Henckley through said Allen, as agent as aforesaid, and for services rendered in keeping a large number of Berkshire hogs, belonging to said Henckley, at the request of said Allen, as his agent, which account is as follows:

1842.		
Feb'y 17	To cash paid Allen at Cin., by Campbell	$135 00
March 2	" " " Hendrickson	60 00
" 17	" " " "	60 00
April 2	" " " "	15 00
" 15	draft " N. Orleans "	110 00
May 17	cash " at sundry times "	187 16
" 24	" forwarded " by Campbell	30 00
Oct. 26	3 coops for pigs by Hendrickson	3 00
" "	10 bushels corn and sacks.	
" "	freight on pigs paid Coombs for Allen, by Hendrickson	3 50
" "	4 Windsor Castle pigs shipped to Allen at $50	200 00
" "	freight on Windsor Castle by Hendrickson	12 50
" "	bal. on $5 bill loaned Allen	3 00
	cash paid Allen by Hendrickson at Cin	60 00
March 17	draft loaned Allen by Hendrickson "	170 00
	order on Keats, on trip south	69 36
	cash paid Allen at N. Orleans by Hendrickson	77 45
	pair pigs sold Allen on trip south	25 00
	cash paid Capt. Hart on W. Castle	2 50
	keeping 64 head of Henckley's Berkshire hogs, from Nov. 28, 1841, one year, at Allen's request	1,000 00
	int. on above account to commencement of suit at law, say	840 00

Your orator avers, that the above account is a just and true bill against said Henckley in favor of your orator and said Campbell, and was due and unpaid at the time of the commencement of said suit at law, and is yet unpaid in whole or in part. Your orator also represents, that after said Henckley recovered said judgment as aforesaid, being under the impression that all his claims against said Henckley were forever barred and cut off by reason of the recovery of said judgment, and being pressed in his means at the time he endeavored to make an arrangement with the said Henckley's attorney, E. Mills, esq., of Cincinnati, by which to be relieved from said claim as a judgment, and to get time to pay the amount of it without being constantly harassed by executions on it; accordingly your orator made his five several promissory notes, dated the 20th of December, 1850, for an amount in all covering said judgment and the costs of said suit, together with the interest on each note to its maturity, which the said Mills accepted, and gave to your orator a receipt for the same, a copy of which is herewith filed, marked E, and made a part of this bill, from which receipt it will be seen that your orator paid the amount of the first note, (it having been originally for five hundred dollars, but on the payment of one hundred dollars that note was taken up and one for four hundred given,) which your orator attaches to this bill by copy, and prays the same to be considered a part of the same as exhibit F. In endeavoring faithfully to carry out the above arrangement with said Mills, your orator has endeavored to raise the money to pay off said notes as they became due, but without success; but recently your orator is advised that he misconceived his rights in the premises, in supposing that said judgment (under the circumstances of its rendition) was a bar against his asserting his claim against the said Henckley, and that he is fully

relievable in this honorable court; wherefore your orator has declined making any further payment on said notes, or of endeavoring so to do, until it shall be determined by your honors that he has no relief in the premises. Your orator therefore claims said five hundred dollars paid on said first note to Mills, as an additional, valid and legal claim against said Hinckley; your orator claims that he and Campbell were entitled, under a contract, a copy of which is herewith filed, marked G, and asked to be made a part of this bill, to compensation from said Henckley, for the following services:

Thirty sows stinted to Windsor Castle, at $2 - - -		$60 00
Nine " " Earl Craven, " - - -		18 00
Your orator also claims that he is entitled to reasonable compensation for keeping Earl Craven after it became certain that he would not breed, about nine months at $3 per month - - - - - - - - - -		27 00
And for keeping Sultana after she became valueless for breeding, about six months at $2 per month - -		12 00
Making a total indebtedness against said Henckley due and owing to your orator and Campbell at the commencement of said suit at law, of the sum of - - -		$3,140 67
Against this your orator admits the credits on said first note sued on - - - - - - - - - -	592 16	
One-third of Windsor Castle's earnings - -	150 00	
" " Earl Craven's earnings - -	30 00	
The price at which your orator sold Earl Craven $15—one-third interest - - - - -	5 00	
Same interest in price at which your orator sold Sultana, $20 - - - - - - - -	6 66	
Prc'ds of sales of some hogs of Henckley sold by your orator when he closed out the Berkshire enterprise	20 00	
Making all credits to Henckley of - - -		803 82
Making a net balance due your orator and Campbell at the commencement of said suit - - - - - -		$2,336 85

Which (with the exception of the five hundred dollars paid Mills) your orator avers was a good and subsisting legal claim against said Henckley, at the time of the commencement of said suit at law.

Your orator also claims interest on said balance $2,336 85, from the commencement of said suit at law to the filing of this bill - - - - - - - -	$479 00	
Also the sum paid Mills since the rendition of said judgment - - - - - - - - -	500 00	
And the interest on that to the filing of this bill	22 00	
Making in addition to what was due by your orator and Campbell at the commencement of said suit at law -		1,001 00
Leaving a sum now due your orator as survivor of Campbell against said Henckley - - - - - - -		$3,337 85

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	int. on above account to commencement of suit at law, say..	840 00

Your orator avers, that the above account is a just and true bill against said Henckley in favor of your orator and said Campbell, and was due and unpaid at the time of the commencement of said suit at law, and is yet unpaid in whole or in part. Your orator also represents, that after said Henckley recovered said judgment as aforesaid, being under the impression that all his claims against said Henckley were forever barred and cut off by reason of the recovery of said judgment, and being pressed in his means at the time he endeavored to make an arrangement with the said Henckley's attorney, E. Mills, esq., of Cincinnati, by which to be relieved from said claim as a judgment, and to get time to pay the amount of it without being constantly harassed by executions on it; accordingly your orator made his five several promissory notes, dated the 20th of December, 1850, for an amount in all covering said judgment and the costs of said suit, together with the interest on each note to its maturity, which the said Mills accepted, and gave to your orator a receipt for the same, a copy of which is herewith filed, marked E, and made a part of this bill, from which receipt it will be seen that your orator paid the amount of the first note, (it having been originally for five hundred dollars, but on the payment of one hundred dollars that note was taken up and one for four hundred given,) which your orator attaches to this bill by copy, and prays the same to be considered a part of the same as exhibit F. In endeavoring faithfully to carry out the above arrangement with said Mills, your orator has endeavored to raise the money to pay off said notes as they became due, but without success; but recently your orator is advised that he misconceived his rights in the premises, in supposing that said judgment (under the circumstances of its rendition) was a bar against his asserting his claim against the said Henckley, and that he is fully

relievable in this honorable court; wherefore your orator has declined making any further payment on said notes, or of endeavoring so to do, until it shall be determined by your honors that he has no relief in the premises. Your orator therefore claims said five hundred dollars paid on said first note to Mills, as an additional, valid and legal claim against said Hinckley; your orator claims that he and Campbell were entitled, under a contract, a copy of which is herewith filed, marked G, and asked to be made a part of this bill, to compensation from said Henckley, for the following services:

Thirty sows stinted to Windsor Castle, at $2		$60 00
Nine " " Earl Craven, "		18 00
Your orator also claims that he is entitled to reasonable compensation for keeping Earl Craven after it became certain that he would not breed, about nine months at $3 per month		27 00
And for keeping Sultana after she became valueless for breeding, about six months at $2 per month		12 00
Making a total indebtedness against said Henckley due and owing to your orator and Campbell at the commencement of said suit at law, of the sum of		$3,140 67
Against this your orator admits the credits on said first note sued on	592 16	
One-third of Windsor Castle's earnings	150 00	
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The price at which your orator sold Earl Craven $15—one-third interest	5 00	
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Making all credits to Henckley of		803 82
Making a net balance due your orator and Campbell at the commencement of said suit		$2,336 85

Which (with the exception of the five hundred dollars paid Mills) your orator avers was a good and subsisting legal claim against said Henckley, at the time of the commencement of said suit at law.

Your orator also claims interest on said balance $2,336 85, from the commencement of said suit at law to the filing of this bill	$479 00	
Also the sum paid Mills since the rendition of said judgment	500 00	
And the interest on that to the filing of this bill	22 00	
Making in addition to what was due by your orator and Campbell at the commencement of said suit at law		1,001 00
Leaving a sum now due your orator as survivor of Campbell against said Henckley		$3,337 85

Your orator also represents, that at the time of the accruing of said account against said Henckley he was residing in the State of Massachusetts, and that he has ever since continued to reside in the State of Massachusetts, and that he has never been in the State of Ohio, or within the jurisdiction of this court; and your orator also represents that the said Henckley has no property within this State or the jurisdiction of this court subject to execution at law; nor has he any property, moneys, rights, credits or demands, in this State or within the jurisdiction of this court, except the judgment aforesaid against your orator and Campbell, nor does your orator know that said Henckley is worth one cent.

Your orator also represents, before the rendition of said judgment against your orator and Campbell, he (Campbell) became and has ever since been insolvent, as your orator is informed and believes, and that he recently died notoriously insolvent, and your orator is in fact solely liable for the amount of said judgment, or the notes given therefor, so far as his responsibility is concerned.

Your orator further represents, that the said Henckley, through his said attorney Mills, has recently caused execution to be issued on said judgment against your orator and said Campbell, and that the same is now levied on the individual property of your orator in Butler county, in this State; consisting of two tracts of land, one appraised ten thousand five hundred and twenty-nine dollars and fifty cents, and the other at two thousand one hundred and seventy-seven dollars and twenty , the whole of which is now advertised for sale, as will be seen by the advertisement thereof, a copy of which is herewith filed, marked H, and made part of this bill; and that the said Henckley or Mills still hold the four promissory notes given by your orator for said judgment and costs, if they have not negotiated the same, which they may well have done (they being negotiable notes) greatly to the damage of your orator. For inasmuch, therefore, as in said suit at law your orator having under advice of counsel filed the plea of the general issue, with notice of the special matter of fraud in procuring said notes, and the failure of the consideration of the same, and believing as he did that he was abundantly able to prove (as he did) such fraud and failure of consideration, and therefore did not file any plea or notice under which according to the law and practice of this court he could have given evidence of or proven his claim against the said Henckley as aforesaid, wherefore the same was not considered by the court or jury in said cause; and forasmuch as he was greatly surprised by the sudden production of the letters aforesaid of the said Campbell on the trial of said cause, of which he was entirely ignorant, both as to their existence or contents, as a consequence of such surprise was totally unprepared to disprove or explain the contents of said letters, which your orator could have abundantly done but for such surprise; and forasmuch as, the premises considered, your orator is totally remediless against said judgment and notes given for the same without the interference of this honorable court, where matters of this kind are properly cognizable, he

prays your honors that the said Samuel L. Henckley be made a party defendant hereto, and that he be required full, true, and perfect answer make to all and singular the premises, and that the court would be pleased to order and direct that service of process on E. Mills, esq., the said attorney of said Henckley, be deemed good and sufficient service upon the said Henckley, and that an account may be taken and stated of what may appear to be due your orator on account of his said claim against the said Henckley, and of the judgment or notes in favor of the said Henckley; your orator being ready and willing, and hereby offering to pay any balance which may appear to be due from him in taking said account; and that the court will order, adjudge, and decree, that whatever amount may be found to be due to your orator, or so much thereof as shall be found to be necessary for that purpose, be applied and set off against said judgment, or to be a payment or satisfaction of said judgment and the damages thereby adjudged against your orator and said Campbell, or that the said judgment and damages be otherwise subjected and made liable by the decree of this court to the payment of your orator's said demand; and that the court will enjoin the collection, transfer, or enforcement of said judgment, and decree that the said Henckley and Mills surrender and deliver up said promissory notes so taken by the said Mills, and that the same be cancelled, and that your orator may have such other and further relief as equity and good conscience may require, and to the court may seem meet in the premises; and in the mean time may it please this honorable court to order and allow that an injunction issue directed against the said Samuel L. Henckley, his attorneys, agents, and servants, restraining and prohibiting them from prosecuting the said judgment and execution, and especially to prevent the sale of your orator's property now under execution on said judgment as aforesaid, and to restrain the said parties from making any levy of said execution on any other property of your orator, and to restrain the endorsement, transfer, or sale of said notes, given to said Mills as aforesaid, and each and every of them, and that such injunction continue till the further order of this court.

R. H. HENDRICKSON.
BRYANT & PROBASCO,
For complainant.

STATE OF OHIO,
Hamilton county, ss:

Richard H. Hendrickson, the complainant, whose name is above subscribed, being duly sworn says, that the matters and things set forth in the above bill so far as stated of his information he believes to be true, and so far as stated of his own knowledge they are true in substance and fact.

[SEAL.] Sworn to and subscribed before me, this 15th day of September, A. D. 1851.

F. HARVIER DANGLER,
Notary public

On said bill is an endorsement of the allowance of an injunction in the words and figures following, to wit:

"I allow a writ of injunction in this case; the clerk will issue it on security being given in the sum of $3,000.

JOHN McLEAN,
Justice sup. court U. S., and 7th circuit.

To WM. MINER, esq., *Clerk C. C.*

18 September, 1851."

The following are copies of the exhibits referred to in said bill, and filed therewith, viz:

Exhibit A.

MIDDLETOWN, 21*st Dec.*, 1841.

MESSRS. HENDRICKSON & CAMPBELL,
Bot. of A. B. Allen,

One-third of the Berkshire boar, Windsor Castle - -		$333 33
" " " " Earl Craven - -		100 00
" " " sow, Sultana - - -		166 67
		$600 00
One Berkshire boar, Buckland - - - - - -		100 00
Two imported Berkshire sows - - -	300 00	
Three American-bred Berkshire sows - -	450 00	
Twelve " " " " - -	550 00	
		$1,300 00

It is understood that all the above stock was taken by Messrs. Hendrickson & Campbell at Cincinnati, on board canal boat, and that all expenses on them since is to be paid by them, except as regards Windsor Castle, Earl Craven, and Sultana, about which see agreement.

Received payment by note.

(Signed) A. B. ALLEN.

No. 1, *Note.*

(Copy of first note.)

MIDDLETOWN, 21*st Dec.*,

$1,000. One day after date we jointly and severally promise to pay to the order of A. B. Allen, one thousand dollars, with interest, value received.

(Signed) R. H. HENDRICKSON,
ANDREW CAMPBELL.

(Endorsed.)

February 17th, 1842. Received one hundred thirty-five dollars on within, of Doctor Campbell - - - - - - - $135 00

March 2,	do.	sixty dollars - -	- 60 00
March 17,	do.	sixty dollars - -	- 60 00
April 15,	do.	from N. Orleans -	- 101 00
May 7,	do.	cash at sundry times	- 187 16

Making four hundred and seventeen $\frac{16}{100}$ dollars paid by R. H. Hendrickson alone, on within - - - - - $417 16

Altogether paid on within - - - - - - - - 552 16

Received May, 1842, of Doctor Campbell, remitted me at Portsmouth.—A. B. Allen - - - - - - - - 30 00

$582 16

Received September 5th, 1842, from Doctor Campbell - 10 00

$592 16

No. 2.

(Copy of second note.)

MIDDLETOWN, *January* 1*st*, 1842.

$500. One year after date we jointly and severally promise to pay to the order of A. B. Allen five hundred dollars, with interest from date, value received.

(Signed) R. H. HENDRICKSON,
ANDREW CAMPBELL.

Endorsed: A. B. ALLEN.

No. 3.

(Copy of third note.)

MIDDLETOWN, *January* 1*st*, 1842.

$625. One year after date we jointly and severally promise to pay to the order of A. B. Allen, six hundred and twenty-five dollars, with interest from date, value received.

(Signed) R. H. HENDRICKSON,
ANDREW CAMPBELL.

Endorsed: A. B. ALLEN.

Exhibit E.—Mills' receipt.

SAMUEL L. HENCKLEY
vs.
HENDRICKSON & CAMPBELL. } U. S. circuit court.

1850, *December* 23*rd*.

Received from R. H. Hendrickson on above judgment, costs - - - - - - - - - - - - $100 00

Also note dated December 20, 1850, due 6|9 January, 1851 - - - - - - - - - - - $400 00
Which has been paid.

Note dated	December	20th,	1850,	due	1|3 May, 1851 -	499 39
"	"	"	"	"	M'ch, 1851 -	494 44
"	"	"	"	"	July, 1851 -	504 38
"	"	"	"	"	Sept., 1851 -	509 42

(Signed) E. MILLS,
Attorney of plaintiff.

Exhibit F.

CINCINNATI, *December 20th*, 1850.

$400. On the 1st January, 1851, I promise to pay to the order of E. Mills, four hundred dollars $\frac{}{100}$, value received, at the office of T. S. Goodman & Co.

(Signed) R. H. HENDRICKSON.

Exhibit H.—Marshal's sale.

UNITED STATES OF AMERICA,
District of Ohio, ss:

By virtue of a writ of execution termed an alias fi. fa., to me issued from the United States circuit court for the seventh circuit, district of Ohio, I shall sell at public sale, to the highest bidder, on Saturday, the 23d of August, A. D. 1851, at 2 o'clock p. m., at the court-house door in the town of Hamilton, Butler county, State of Ohio, the following lands and tenements, to wit: Part of fractional section eighteen, township two and range (4) four, of lands lying between the Great Miami rivers and the Virginia reservation, commencing at the northeast corner of said fractional section, and running thence south sixty-one chains and sixty-three links to a corner; thence north forty-three chains and ninety links to the Great Miami river; thence with the meanders of said river to the place of beginning; situate in Butler county, Lemon township, State of Ohio, containing two hundred and thirty-five and one-tenth acres, more or less: And also the following tract of land lying and being in section seventeen, township two, range four, between the Miami rivers, bounded as follows, to wit: commencing forty chains east of the northwest corner of said section, being an original corner; thence north eighty-nine degrees east, fifteen chains ninety-six links, witnessed by a beech tree; north fifty-two degrees east, twenty-eight links, witnessed by a bur oak; south eighteen degrees east, sixty-eight links; thence south thirty-five minutes east, thirty-one chains and thirty links to a corner, witnessed by a white oak; thence south forty-three degrees east, thirty-three links, witness a white ash; north seventy-five degrees west, twenty-three links; thence south eighty-nine degrees west, sixteen chains and seventeen links to a corner, witnessed by a white oak; north seventy-four degrees east, ninety-one links to a gum tree; north thirteen degrees east, sixty-six

links; thence north thirty-one chains and thirty links to the place of beginning, being in township, county and State aforesaid, containing fifty and twenty-seven hundredths acres.

First tract of two hundred and thirty-five and one-tenth acres, appraised at $10,579 50, at rate of $45 per acre. Second tract of fifty and twenty-seven hundredths acres, appraised at $2,177 20, at rate of $43 33 per acre.

Taken as the property of Richard H. Hendrickson, at the suit of Samuel L. Henckley. Terms of sale, cash.

MILLS, *Attorney*.

G. A. JONES, *U. S. M. O. D.*
By JNO. BLACKBURN, *Deputy*.

The above sale is postponed until Saturday, the 20th of September next, at the same hour and place.

G. A. JONES, *U. S. M.*
By JOHN BLACKBURN, *Deputy*.

Exhibit G.

It is hereby agreed by Samuel L. Henckley, of Northampton, Mass., John Mahard, jr., of Cin'ti, and Richard H. Hendrickson, of Middletown, O., that each shall profit one third in., to wit, in the following animals, at the following rates, viz: Windsor Castle and Earl Craven, two Berkshire boars, and Sultana, a Berkshire sow, at one thousand dollars for the first named animal, five hundred dollars for the second, and five hundred dollars for the third, making eighteen hundred dollars for the three. That the two above boars shall stand respectively as agreed upon by a majority of their owners, of the different residences of the parties of the second and third parts, at fifteen dollars for services of sows of Windsor Castle, and ten dollars for Earl Craven, unless a majority of the owners think it advisable to reduce the rates to certain persons sending a large number; and each party to this agreement where the animal shall stand shall be accountable to the other parties for their proportion, each one-third of the earnings of said animal or animals during his or their standing with them, at the end of every three months beginning from the first December next, each party having the privilege of putting six sows only upon an average per week to each boar, and the same to be covered but once, unless she prove not in pig and is again returned for the services of the boar. The party keeping the above animals to be allowed for his expenses and trouble of the same, two dollars for each sow served and no more, which shall be in full for all charges for feed and attentions whatever of said animals. Sultana to be kept at the place agreed on by a majority of her owners, and her produce, is they cannot agree upon a division of it, to be sold for cash to the highest bidder at two or three months old as the majority of her owners shall direct, her expenses to be charged at two dollars per month, which shall include all charges for keep, attention, &c., whatsoever, and also the expenses of keeping her pigs till three months old, the

same to be deducted from the gross amount of the sales of her produce, and the remainder to be divided equally between her respective owners. This agreement to continue till the first of November next, when, if not mutually satisfactory to renew it, the animals owned conjointly and specified above to be taken and sold at public auction for cash to the highest bidder, and the net proceeds of such sales to be divided equally between the respective owners.

(Signed) SAMUEL L. HENCKLEY,
Per A. B. ALLEN,
JOHN MAHARD, Jr.,
RICHARD H. HENDRICKSON.

Cincinnati, Nov. 25th, 1841.

Circuit court, U. S., for Ohio.

RICHARD H. HENDRICKSON
vs.
SAMUEL L. HENCKLEY and E. MILLS. } Chancery, for injunction.

Defendants in the above stated case will hereby take notice, that the complainant, Richard H. Hendrickson, will apply to the Hon. John McLean, one of the judges of the Supreme Court of the United States, at his residence at Clifton, immediately north of the city of Cincinnati, and in the county of Hamilton, Ohio, on Tuesday, September 16th inst., at 9 o'clock a. m., for an injunction against the said defendants, to restrain the said Henckley, his agents and attorneys, from further prosecuting or enforcing an execution, issued by the clerk of the circuit court of the United States for the district of Ohio, on a certain judgment in said court, rendered in favor of said Henckley against the complainant, Hendrickson, and one Andrew Campbell, in the month of October, 1850, which execution is now levied on the lands of the said Hendrickson, in the county of Butler, Ohio; and to restrain the sale thereof, and also of all other property of said Hendrickson till the further order of the court, and also to restrain the said Henckley and Mills, or either of them, from transferring, endorsing or otherwise disposing of four promissory notes, dated the 20th December, 1850, signed by the said Hendrickson, and payable to the order of said Mills, 1|3 May, '51, 1|3 March, '51, 1|3 July, '51, and 1|3 September, '51, respectively: first for $499 39, second for $494 44, third for $504 38, and fourth for $509 42, as from said Mills' receipt, dated the 23d day of December, 1850, till the further order of this court.

Cincinnati, Sept. 13th, 1851.

BRYANT & PROBASCO,
Sol'rs for complainant.

To E. MILLS, in person and as attorney for Saml. L. Henckley.

STATE OF OHIO,
Hamilton county, ss:

Personally came before me the subscriber, a notary public in and

for the county aforesaid, Wm. B. Probasco, who on solemn oath says, he served a true copy of the within notice on E. Mills, at his office in Cincinnati, on Saturday afternoon, the 13th day of September, 1851, and that he called there the day before, and once before on Saturday, to serve it, but the said Mills was not in his office; and further says not.

WM. B. PROBASCO.

Sworn to and subscribed before me this 15th day of September, 1851, as witness my hand and official seal.

[SEAL.]

F. HAVIER DENGLER,
Notary public.

B.

Pleas begun and held at the court-house in the city of Columbus, on the third Tuesday in the month of October, that being the fifteenth day of that month, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States of America the 75th, before the honorable John McLean and the honorable Humphrey H. Leavitt, judges of the circuit court of the United States within and for the district of Ohio.

Among other proceedings had were the following, to wit:

SAMUEL L. HENCKLEY
vs.
RICHARD H. HENDRICKSON and ANDREW CAMPBELL. } In assumpsit.

Be it remembered, that heretofore, to wit, on the twelfth day of April, in the year of our Lord one thousand eight hundred and forty-eight, came the said plaintiff, by his attorney, and sued out of the clerk's office of said court a certain writ of summons ad respondendum, against the said defendants, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon Richard H. Hendrickson and Andrew Campbell, citizens of and residents in the State of Ohio, if they be found in your bailwick, to be and appear before the judges of the circuit court of the United States, for the district of Ohio aforesaid, at Columbus, on the third Monday in the month of July next, to answer unto Samuel L. Henckley, a citizen of and resident in the State of Massachusetts, of a plea of assumpsit, damages two thousand five hundred (2,500) dollars; and of this writ make legal service and due return on the first Monday of May next, and have then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 12th day of April, 1848, and in the seventy-second year of the independence of the United States of America.

[SEAL.]

Attest: WM. MINER, *Clerk*.

On which said writ are the following endorsements, to wit:

"Suit bro't on three notes made by defendants to A. B. Allen, and endorsed by said Allen to plaintiff—one note for $1,000, dated 21st December, 1841, at one day's date; another, dated 1st January, 1842, for $625 00, at one year from date; and another, dated 1st January, 1842, for $500, also at 1 year from date, with interest on the latter two notes from dates; also, for money lent, money due on an account stated, and money had and received.

J. M. GUITTEAU,
Att'y for pl'ff."

"I, J. M. Guitteau, acknowledge myself security for all costs for which the plaintiff may be liable in this suit.

J. M. GUITTEAU."

April 12th, 1848.

And afterwards, to wit, at rules of said court, held in the clerk's office of said court for the month of May, in the year of our Lord one thousand eight hundred and forty-eight, that being the time to which said writ was made returnable, came the marshal, to whom the same was in form aforesaid directed, and returned the same into said clerk's office, with his proceedings endorsed thereon, in the words and figures following, to wit:

"Served by leaving a copy of this writ with Andrew Campbell, personally, on the 21st day of April, 1848, and by leaving a copy of this writ at the residence of Richard H. Hendrickson, on the same day, to wit, the 21st day of April, 1848.

ROBT. BROWN,
Deputy U. S. marshal, district of Ohio."

And thereupon came the said plaintiff, by his attorney, and filed in said clerk's office his declaration in this cause, in the words and figures following, to wit:

Circuit court of the United States for the seventh circuit and district of Ohio, of July term, A. D. 1848.

DISTRICT OF OHIO, *ss.*

Samuel L. Henckley, who is a citizen of the State of Massachusetts, complains of Richard H. Hendrickson and Andrew Campbell, who are citizens of the State of Ohio, for that whereas, the defendants, on the twenty-first day of December, A. D. eighteen hundred and forty-one, at Middletown, in the county of Butler, and State of Ohio, made their promissory note in writing, and then and there delivered the same to A. B. Allen, who is a citizen and resident of the State of New York, and thereby jointly and severally promised to pay the said A. B. Allen, or order, one thousand dollars, one day after date thereof, which pe-

1854.

riod has now elapsed; and the said A. B. Allen, who is a citizen of the State of New York, then and there endorsed the same to the said Samuel L. Henckley, whereof the said defendants then and there had notice, and then and there in consideration of the premises promised to pay the amount of the said note to the said Henckley according to the tenor and effect thereof. And also, for that whereas, the said Richard H. Hendrickson and Andrew Campbell, on the first day of January, in the year one thousand eight hundred and forty-two, at Middletown, in the county of Butler, and State of Ohio aforesaid, made their certain other promissory note in writing, and then and there delivered the same to A. B. Allen, and thereby promised jointly and severally to pay the said A. B. Allen, or order, six hundred and twenty-five dollars, with interest from date, in one year after the date thereof, which period has now elapsed; and the said A. B. Allen, who is a citizen of the State of New York, then and there endorsed the same to the said plaintiff, whereof the said defendants then and there had notice, and then and there, in consideration of the premises, promised to pay the amount of the said note to the said plaintiff according to the tenor and effect thereof. And also, for that whereas, the said Richard H. Hendrickson and Andrew Campbell, on the first day of January, in the year of our Lord one thousand eight hundred and forty-two, at the town of Middletown, in the county of Butler, and State of Ohio, made their certain other promissory note in writing, and then and there delivered the same to A. B. Allen, and thereby promised jointly and severally to pay the said A. B. Allen, or order, five hundred dollars, in one year after the date thereof, which period has now elapsed; and the said A. B. Allen, who is a citizen of the State of New York, then and there endorsed the same to said plaintiff, whereof the said defendants then and there had due notice, and then and there, in consideration of the premises, promised to pay the amount of the said note to the said plaintiff according to the tenor and effect thereof; yet the said defendants have disregarded their promises, and have not paid the said several sums of money above mentioned, or any part thereof, to the damage of the said plaintiff twenty-five hundred dollars. And also, for that whereas, the said Richard H. Hendrickson and Andrew Campbell, who are citizens of the State of Ohio, on the fourth day of January, in the year one thousand eight hundred and forty-three, at the county of Butler, in the State of Ohio, were jointly and severally indebted to said plaintiff in the sum of twenty-five hundred dollars, for money then and there had and received by the defendants for the use of the plaintiff; and in the sum of twenty-five hundred dollars for money then and there lent by the plaintiff to the defendants at their request; and in the sum of twenty-five hundred dollars for money found to be due from the defendants to the plaintiff on an account then and there stated between them. And whereas, the defendants, afterwards, on the first day of March, in the year one thousand eight hundred and forty-eight, in consideration of the premises, then and there promised to pay the said last mentioned several sums of money to the

On which said writ are the following endorsements, to wit:

"Suit bro't on three notes made by defendants to A. B. Allen, and endorsed by said Allen to plaintiff—one note for $1,000, dated 21st December, 1841, at one day's date; another, dated 1st January, 1842, for $625 00, at one year from date; and another, dated 1st January, 1842, for $500, also at 1 year from date, with interest on the latter two notes from dates; also, for money lent, money due on an account stated, and money had and received.

J. M. GUITTEAU,
Att'y for pl'ff."

"I, J. M. Guitteau, acknowledge myself security for all costs for which the plaintiff may be liable in this suit.

J. M. GUITTEAU."

April 12th, 1848.

And afterwards, to wit, at rules of said court, held in the clerk's office of said court for the month of May, in the year of our Lord one thousand eight hundred and forty-eight, that being the time to which said writ was made returnable, came the marshal, to whom the same was in form aforesaid directed, and returned the same into said clerk's office, with his proceedings endorsed thereon, in the words and figures following, to wit:

"Served by leaving a copy of this writ with Andrew Campbell, personally, on the 21st day of April, 1848, and by leaving a copy of this writ at the residence of Richard H. Hendrickson, on the same day, to wit, the 21st day of April, 1848.

ROBT. BROWN,
Deputy U. S. marshal, district of Ohio."

And thereupon came the said plaintiff, by his attorney, and filed in said clerk's office his declaration in this cause, in the words and figures following, to wit:

Circuit court of the United States for the seventh circuit and district of Ohio, of July term, A. D. 1848.

DISTRICT OF OHIO, *ss.*

Samuel L. Henckley, who is a citizen of the State of Massachusetts, complains of Richard H. Hendrickson and Andrew Campbell, who are citizens of the State of Ohio, for that whereas, the defendants, on the twenty-first day of December, A. D. eighteen hundred and forty-one, at Middletown, in the county of Butler, and State of Ohio, made their promissory note in writing, and then and there delivered the same to A. B. Allen, who is a citizen and resident of the State of New York, and thereby jointly and severally promised to pay the said A. B. Allen, or order, one thousand dollars, one day after date thereof, which pe-

riod has now elapsed; and the said A. B. Allen, who is a citizen of the State of New York, then and there endorsed the same to the said Samuel L. Henckley, whereof the said defendants then and there had notice, and then and there in consideration of the premises promised to pay the amount of the said note to the said Henckley according to the tenor and effect thereof. And also, for that whereas, the said Richard H. Hendrickson and Andrew Campbell, on the first day of January, in the year one thousand eight hundred and forty-two, at Middletown, in the county of Butler, and State of Ohio aforesaid, made their certain other promissory note in writing, and then and there delivered the same to A. B. Allen, and thereby promised jointly and severally to pay the said A. B. Allen, or order, six hundred and twenty-five dollars, with interest from date, in one year after the date thereof, which period has now elapsed; and the said A. B. Allen, who is a citizen of the State of New York, then and there endorsed the same to the said plaintiff, whereof the said defendants then and there had notice, and then and there, in consideration of the premises, promised to pay the amount of the said note to the said plaintiff according to the tenor and effect thereof. And also, for that whereas, the said Richard H. Hendrickson and Andrew Campbell, on the first day of January, in the year of our Lord one thousand eight hundred and forty-two, at the town of Middletown, in the county of Butler, and State of Ohio, made their certain other promissory note in writing, and then and there delivered the same to A. B. Allen, and thereby promised jointly and severally to pay the said A. B. Allen, or order, five hundred dollars, in one year after the date thereof, which period has now elapsed; and the said A. B. Allen, who is a citizen of the State of New York, then and there endorsed the same to said plaintiff, whereof the said defendants then and there had due notice, and then and there, in consideration of the premises, promised to pay the amount of the said note to the said plaintiff according to the tenor and effect thereof; yet the said defendants have disregarded their promises, and have not paid the said several sums of money above mentioned, or any part thereof, to the damage of the said plaintiff twenty-five hundred dollars. And also, for that whereas, the said Richard H. Hendrickson and Andrew Campbell, who are citizens of the State of Ohio, on the fourth day of January, in the year one thousand eight hundred and forty-three, at the county of Butler, in the State of Ohio, were jointly and severally indebted to said plaintiff in the sum of twenty-five hundred dollars, for money then and there had and received by the defendants for the use of the plaintiff; and in the sum of twenty-five hundred dollars for money then and there lent by the plaintiff to the defendants at their request; and in the sum of twenty-five hundred dollars for money found to be due from the defendants to the plaintiff on an account then and there stated between them. And whereas, the defendants, afterwards, on the first day of March, in the year one thousand eight hundred and forty-eight, in consideration of the premises, then and there promised to pay the said last mentioned several sums of money to the

plaintiff on request; yet they have disregarded their promises, and have not paid the said several sums of money, nor either of them, nor any part thereof, to the damage of the plaintiff twenty-five hundred dollars, and thereupon he brings suit.

J. M. GUITTEAU,
Att'y for pl'ff.

And thereupon the said plaintiff, by his attorney, entered a rule in said clerk's , on the said defendants, to plead to said declaration by the June rule day of said court, then next ensuing, at which time, to wit, at rules of said court held as aforesaid for the month of June, in the year of our Lord one thousand eight hundred and forty-eight, came the said defendants, by their attorneys, and filed in the clerk's office aforesaid their plea to the foregoing declaration, in the words and figures following, to wit:

RICHARD H. HENDRICKSON and ANDREW CAMPBELL } ads.
SAMUEL L. HENCKLEY. }

June rules, 1848.

And now come the said defendants, by L. D. Campbell and Henry Stanbery, their attorneys, and defend the wrong and injury, when, &c., and say, that they did not undertake and promise in manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves upon the country, &c. And for a further plea, as to the said first, second, and third counts of the said declaration, the said defendants, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, say, that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the said several promissory notes, in the said three counts mentioned, were obtained from the said defendants by the said A. B. Allen (and others in collusion with him) by fraud, covin, and misrepresentation, of all which, the said plaintiff had notice at the time said notes were so assigned to him; and this they, the said defendants, are ready to verify, wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

The plaintiff, or J. M. Guitteau, esq., his attorney, will take notice that on the trial of this case the said defendants will give in evidence, and insist, by the way of defence, upon the following matters:

1. That the said three notes mentioned in said declaration were founded upon, and given solely in consideration of the sale by said A. B. Allen to the defendants of a lot of hogs, which said Allen represented to be of the imported Berkshire stock, and valuable for breeding, and upon the further consideration of the agreement of said Allen to forward to the said defendants, within the period of twelve months from

the date of said notes, orders for the purchase from said defendants of one thousand dollars' worth of said hogs, and their increase, and to break up an establishment for the raising and sale of the same stock, then carried on by said Allen, at Black Rock, in the State of New York, and transfer the business, and orders, and good will of his establishment to the defendants. Whereas the said hogs, as the said Allen well knew, were not of the imported Berkshire stock, and were wholly valueless for breeding; and that said Allen did not, within said period of twelve months, nor at any time since, forward any orders to the defendants, nor break up his said establishment, nor transfer any orders therefrom, or the business, or the good will thereof, to the said defendants. And the said defendants have paid to the said Allen the full value of all the hogs so purchased of him, exclusive of the moneys which remain due upon the said three notes, and that the said plaintiff took an assignment of said notes long after the same became due, and with full notice of the consideration upon which the same had been given, and the fraud that had been practised on the said defendants by said Allen.

2. The defendants will also prove by way of defence on said trial that said notes were obtained from them by said Allen by fraud, covin, and misrepresentation in this, to wit, that a certain lot of boars and sows then sold and delivered by said Allen to the defendants, and which sale constituted the consideration of said notes, were then and there, at the date of said notes at Middletown aforesaid, of the imported Berkshire breed, and valuable as breeders, all which was then and there falsely and wilfully asserted by said Allen to the said defendants, and that said defendants relying upon said representations of said Allen, then made and delivered their said notes to him; whereas the said hogs, as said Allen then well knew, were not of the imported Berkshire breed, and were wholly valueless as breeders, and the consideration of said notes has wholly failed, of all which the said plaintiff had notice at the time the said notes were assigned to him.

L. D. CAMPBELL, and
HENRY STANBERY,
Att'ys for defendants.

And afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and forty-eight, this cause was continued; and afterwards, to wit, at the November term of said court, in the year last aforesaid, this cause was continued; and afterwards, to wit, at the time appointed by law for holding the July term of said court, in the year of our Lord one thousand eight hundred and forty-nine, the marshal of said district, in conformity with the requirements of an order to that effect from the honorable John McLean, one of the judges of the said circuit court, adjourned said court to the fifteenth day of October then next ensuing, whereupon by reason of such adjournment this cause was continued; and afterwards, to wit, on the seventeenth day of October, being at the October term of said court, in

plaintiff on request; yet they have disregarded their promises, and have not paid the said several sums of money, nor either of them, nor any part thereof, to the damage of the plaintiff twenty-five hundred dollars, and thereupon he brings suit.

J. M. GUITTEAU,
Att'y for pl'ff.

And thereupon the said plaintiff, by his attorney, entered a rule in said clerk's , on the said defendants, to plead to said declaration by the June rule day of said court, then next ensuing, at which time, to wit, at rules of said court held as aforesaid for the month of June, in the year of our Lord one thousand eight hundred and forty-eight, came the said defendants, by their attorneys, and filed in the clerk's office aforesaid their plea to the foregoing declaration, in the words and figures following, to wit:

RICHARD H. HENDRICKSON and ANDREW CAMPBELL ads. SAMUEL L. HENCKLEY.

June rules, 1848.

And now come the said defendants, by L. D. Campbell and Henry Stanbery, their attorneys, and defend the wrong and injury, when, &c., and say, that they did not undertake and promise in manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves upon the country, &c. And for a further plea, as to the said first, second, and third counts of the said declaration, the said defendants, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, say, that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the said several promissory notes, in the said three counts mentioned, were obtained from the said defendants by the said A. B. Allen (and others in collusion with him) by fraud, covin, and misrepresentation, of all which, the said plaintiff had notice at the time said notes were so assigned to him; and this they, the said defendants, are ready to verify, wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

The plaintiff, or J. M. Guitteau, esq., his attorney, will take notice that on the trial of this case the said defendants will give in evidence, and insist, by the way of defence, upon the following matters:

1. That the said three notes mentioned in said declaration were founded upon, and given solely in consideration of the sale by said A. B. Allen to the defendants of a lot of hogs, which said Allen represented to be of the imported Berkshire stock, and valuable for breeding, and upon the further consideration of the agreement of said Allen to forward to the said defendants, within the period of twelve months from

the date of said notes, orders for the purchase from said defendants of one thousand dollars' worth of said hogs, and their increase, and to break up an establishment for the raising and sale of the same stock, then carried on by said Allen, at Black Rock, in the State of New York, and transfer the business, and orders, and good will of his establishment to the defendants. Whereas the said hogs, as the said Allen well knew, were not of the imported Berkshire stock, and were wholly valueless for breeding; and that said Allen did not, within said period of twelve months, nor at any time since, forward any orders to the defendants, nor break up his said establishment, nor transfer any orders therefrom, or the business, or the good will thereof, to the said defendants. And the said defendants have paid to the said Allen the full value of all the hogs so purchased of him, exclusive of the moneys which remain due upon the said three notes, and that the said plaintiff took an assignment of said notes long after the same became due, and with full notice of the consideration upon which the same had been given, and the fraud that had been practised on the said defendants by said Allen.

2. The defendants will also prove by way of defence on said trial that said notes were obtained from them by said Allen by fraud, covin, and misrepresentation in this, to wit, that a certain lot of boars and sows then sold and delivered by said Allen to the defendants, and which sale constituted the consideration of said notes, were then and there, at the date of said notes at Middletown aforesaid, of the imported Berkshire breed, and valuable as breeders, all which was then and there falsely and wilfully asserted by said Allen to the said defendants, and that said defendants relying upon said representations of said Allen, then made and delivered their said notes to him; whereas the said hogs, as said Allen then well knew, were not of the imported Berkshire breed, and were wholly valueless as breeders, and the consideration of said notes has wholly failed, of all which the said plaintiff had notice at the time the said notes were assigned to him.

L. D. CAMPBELL, and
HENRY STANBERY,
Att'ys for defendants.

And afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and forty-eight, this cause was continued; and afterwards, to wit, at the November term of said court, in the year last aforesaid, this cause was continued; and afterwards, to wit, at the time appointed by law for holding the July term of said court, in the year of our Lord one thousand eight hundred and forty-nine, the marshal of said district, in conformity with the requirements of an order to that effect from the honorable John McLean, one of the judges of the said circuit court, adjourned said court to the fifteenth day of October then next ensuing, whereupon by reason of such adjournment this cause was continued; and afterwards, to wit, on the seventeenth day of October, being at the October term of said court, in

the year last aforesaid, "on motion of plaintiff by Mr. Mills of counsel, leave is given him to file a replication to the plea of the defendants." And thereupon the said plaintiff, by his attorney, filed in said court his replication aforesaid, in the words and figures following, to wit:

"SAMUEL L. HENCKLEY
vs.
ANDREW CAMPBELL and RICHARD H. HENDRICKSON.

And the said Henckley, as to the said plea of said defendants firstly above pleaded, doth the like. And the said plaintiff, as to the plea secondly above pleaded by the said defendants, says, that he ought not to be barred of his action aforesaid, because he says, that the said several promissory notes in said plea mentioned were not obtained from said defendants by said A. B. Allen, or others in collusion with him, by fraud, covin, or misrepresentation, of which the said plaintiff had notice at the time the said notes were so assigned to him, as the said defendants in their plea have alleged; and of this he puts himself upon the country, &c., and the defendants do the like.

J. M. GUITTEAU,
Att'y for plaintiff."

And thereupon this cause was continued; and afterwards, to wit, at the November term of said court, in the year last aforesaid, this cause was continued at defendants' costs; and afterwards, to wit, at the time appointed by law for holding the July term of said court, in the year of our Lord one thousand eight hundred and fifty, the marshal of said district, in conformity with the requirements of an order to that effect from the honorable John McLean, one of the judges of said circuit court, adjourned said court to the thirtieth day of September then next ensuing; whereupon, by reason of such adjournment, this cause was continued; and afterwards, to wit, at the September term of said court, in the year last aforesaid, this cause was continued; and afterwards, to wit, on the sixteenth day of October, being at the October term of said court in the year last aforesaid, "came the parties by their attorneys, and thereupon came a jury, to wit: Mahlon M. Coffee, Adam Peters, Washington W. Conklin, Sheldon Clark, James A. Scranton, Samuel E. Hibben, Elias H. Haines, William Cooper, O. H. Moeller, Joseph Kaler, Henry Reed, and William Domigan, who were duly empanneled and sworn to speak the truth upon the issue joined between the parties, but the investigation of this cause not being completed, the court adjourned the jury until to-morrow morning at 9 o'clock; and afterwards, to wit, on the seventeenth day of October, in the same year and term of said court last mentioned, came the parties by their attorneys, and also the jurors aforesaid, and thereupon the said jurors upon their oaths do say, that the said defendants did assume and promise in manner and form as the said plaintiff has complained against them, and assess the damages of the said plaintiff by reason thereof to two thousand three hundred and eighty-six dollars and eleven cents. Therefore

it is considered that the said plaintiff recover of the said defendants the said sum of two thousand three hundred and eighty-six dollars and eleven cents, his damages aforesaid by the jurors in form aforesaid assessed, and also his costs in this behalf expended, taxed to $40 34."

And now at this day, to wit, on the nineteenth day of October, in the year and at the term of said court first herein mentioned, came the defendants by their attorneys, and moved the court to set aside the judgment and verdict entered in this case at the present term, and grant them a new trial; which motion being considered by the court, it is ordered that the same be overruled.

THE UNITED STATES OF AMERICA,
District of Ohio, ss.

I, William Miner, clerk of the circuit court of the United States, for the district of Ohio, do hereby certify that the foregoing is a true, full and correct exemplification of the record in the case of Samuel L. Henckley, plaintiff, and Richard H. Hendrickson and Andrew Campbell, defendants, at the October term, A. D. 1850, of said court, as the same appears on the records of said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said circuit court at the city of Columbus, this 6th day of August, A. D. 1851.

[SEAL.]

WM. MINER, *Clerk*.

And also on the said twenty-sixth day of September, in the year eighteen hundred and fifty-one, the complainant filed in said clerk's office a certain injunction bond, which is in the words and figures following, to wit:

"Know all men that we, Richard H. Hendrickson and Alexander P. Miller, of the State of Ohio, are held and firmly bound unto Saml. L. Henckley, of the State of Massachusetts, in the sum of three thousand dollars, good and lawful money of the United States of America, for the payment of which we bind ourselves, our and each of our heirs, executors and administrators, firmly by these presents; sealed with our seals, and dated at Columbus, Ohio, this twenty-sixth day of September, anno Domini 1851.

Whereas Richard H. Hendrickson, on the eighteenth day of September, A. D. 1851, obtained an allowance of an injunction from the honorable John McLean, one of the judges of the Supreme Court of the United States of America, on an application addressed to the circuit court of the United States aforesaid, for the district of Ohio, by the said Hendrickson against the said Henckley, restraining the said Henckley, his agents and attorneys, from further prosecuting a certain judgment obtained by him, the said Henckley, against the said Hendrickson and one Andrew Campbell, at the October term of said circuit court at Columbus, for the year 1850, and on which execution has been issued and levied on the lands of the said Hendrickson, in Butler county; and

also restraining said Henckley from selling, disposing of, or transferring four certain promissory notes, given by the said Hendrickson to E. Mills, on the 20th day of December, 1850; for more particular description of all of which reference is hereby made to the said application of the said Hendrickson, this day filed in the office of the clerk of said circuit court at Columbus.

Now, the condition of this obligation is such, that if the said Hendrickson shall well and truly prosecute said injunction to effect, and pay all costs and moneys due or to become due from him on said judgment at law, and all moneys and costs which shall be decreed against him in case such injunction shall be dissolved, then and in that case this obligation to be void and of no effect, otherwise to be and remain in full force and virtue.

R. H. HENDRICKSON, [SEAL.]
ALEX. P. MILLER, [SEAL.]

Signed and acknowledged in presence of—
B. RIDDELL."

Whereupon the following writs of subpœna and injunction were issued from said clerk's office, to wit:

"UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon Samuel L. Henckley, a citizen of and resident in the State of Massachusetts, if he be found in your bailiwick, to be and appear before the judges of the circuit court of the United States, for the district of Ohio aforesaid, at Columbus, on the 3rd Tuesday in the month of October next, to answer a bill in chancery filed against him by Richard H. Hendrickson, a citizen of and resident in the State of Ohio, and upon which an injunction has been allowed by the Hon. John McLean, one of the judges of said court; and have then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 26th day of September, 1851, and in the 76th year of the independence of the United States of America.
[SEAL.]
Attest: WM. MINER, *Clerk*."

Which said writ of subpœna was duly returned by the marshal of said district, to whom the same was directed, with his proceedings endorsed thereon, in the words and figures following, to wit:

"Not found as to Samuel L. Henckley; served on E. Mills, esq., his attorney, personally with copy, October 8th, 1851.

G. A. JONES, *U. S. M.*
By JNO. BLACKBURN, *Dep'y.*

THE UNITED STATES OF AMERICA,
District of Ohio, ss:

The President of the United States of America, to Samuel L. Henckley, and to his counsellors, attorneys, solicitors, and agents, and to each and every one of them, greeting:

Whereas Richard H. Hendrickson has filed on the chancery side of the circuit court of the United States, for the district of Ohio, a bill against you, the said Samuel L. Henckley, among other things charging, that at the October term, A. D. 1850, of the circuit court aforesaid, on the law side thereof, you, the said Henckley, by the consideration of said court, recovered against him, the said Hendrickson, and one Andrew Campbell, a judgment for the sum of $2,386\frac{11}{100}$ damages, and $40\frac{84}{100}$ costs of suit; that execution has been issued on said judgment, and levied upon the lands of the said Hendrickson, in Butler county, Ohio. Said bill further charges, that at the time of the commencement of said suit at law, upon which said judgment was given, you, the said Hinckley, was indebted to the said Hendrickson and Campbell in the sum of two thousand three hundred and thirty-six dollars and eighty-five cents; that in the defence made by said Hendrickson and Campbell to said action at law, he, the said Hendrickson, under the advice of counsel, filed the plea of the general issue, with notice of the special matter of fraud in procuring the notes upon which said action was founded, and the failure of the consideration of the same, (which in said bill is particularly set forth;) and believing, as he alleges he did, that he was abundantly able to prove, and which he further alleges he did prove, such fraud and failure of consideration, he did not file any plea or notice under which, according to law and the practice of said court, he could have given evidence of or proven his said claim against you, the said Henckley, wherefore the same was not considered by the court or jury in said cause. Said Hendrickson further represents by said bill, that after you, the said Henckley, recovered said judgment as aforesaid, being under the impression that all his claims against you, the said Henckley, were forever barred and cut off by reason of the recovery of said judgment; and pressed in his means at the time, he endeavored to make an arrangement with the said Henckley's attorney, E. Mills, esq., of Cincinnati, by which, to be relieved from said claim as a judgment, and to get time to pay the amount of it without being constantly harassed with executions on it, accordingly, he made his five several promissory notes, dated the 20th December, 1850, for an amount in all covering the said judgment and the costs of said suit, together with the interest on each note to maturity, which the said Mills accepted, and gave to him, the said Hendrickson, a receipt for the same. We, having regard to the matters aforesaid, do hereby command and strictly enjoin you, the said Samuel L. Henckley, and your attorneys, solicitors, agents, and servants, from further prosecuting the said judgment and execution, and particularly that you do not make any sale of the property of the said Hendrickson now levied

upon in virtue of the execution issued upon said judgment; and further, that you do not make any further levy by virtue of said judgment and execution upon any other property of the said Hendrickson; and also, that you do not make any endorsement, transfer, or sale of the said five promissory notes given as aforesaid by the said Hendrickson to said Mills. All which commands and injunctions you are required to observe and obey, until our said circuit court shall make further order to the contrary. Hereof you are not to fail, under the full penalty of the law thence next ensuing.

Witness the honorable Roger B. Taney, chief justice of the United States, this 3d day of October, A. D. 1851, and in the 76th year of the independence of the United States of America.
[SEAL.]
Attest: WM. MINER, *Clerk*.

Which said writ of injunction was afterwards returned to said court by said marshal, with his return endorsed thereon as follows, to wit:

"Not found as to Samuel L. Henckley; served personally on E. Mills, esq., his attorney, with copy, October 8th, 1851.

G. A. JONES, *U. S. marshal, O. D.*
By JNO. BLACKBURN, *Deputy*."

And afterwards, to wit, at the October term of said court, in the year eighteen hundred and fifty-two, the following orders were made in this cause, to wit:

"On motion, by consent of counsel, leave is given to the defendants to answer within ninety days after the end of this term, and that both parties have leave to take testimony until next term, and that the clerk may, on application of either party, open any deposition on file.

"On motion of the complainant, by his counsel, it is ordered that a dedimus potestatem issue in this case directed to David Heaton, esq., of Middletown, Butler county, Ohio; and also to John H. Wilson, esq., of Hamilton, Butler county, Ohio, severally directing them to proceed to take depositions in this case on behalf of the complainant, agreeably to the rules and practice of this court, at their respective offices, at such time as the said complainant may direct."

And thereupon this cause was continued; and afterwards, to wit, on the seventh day of May, in the year of our Lord one thousand eight hundred and fifty-two, came the defendant, by his solicitor, and filed in the clerk's office of said court his answer to the said bill of complaint, which is in the words and figures following, to wit:

The answer of Samuel L. Henckley to the bill of complaint of Richard H. Hendrickson, filed against him in the circuit court of the United States, 7th judicial district, for the State of Ohio.

This respondent, Samuel L. Henckley, saving to himself all exceptions to the manifold errors and imperfections of said bill, for answer to so much thereof as he is advised it is material and necessary for him

to answer, says: That in the spring of the year eighteen hundred and forty-one, at the solicitation of R. L. Allen, who was, and now is, his agent in the city of New York, he loaned to A. B. Allen a large sum of money, on the following condition and agreement, to wit: A. B. Allen should take said money, go to England and purchase stock of a superior breed, and bring it to this country for the purpose of breeding and selling the same, and that out of the first proceeds of the sales made, said A. B. Allen should pay said R. L. Allen, agent as aforesaid, the money so advanced. That subsequently, in May, A D. 1841, said A. B. Allen having borrowed the money on these terms, did go to England and purchase stock according to said contract, and imported it to this country; that among said imported stock, as this respondent is informed and believes, were a number of Berkshire swine; that, on the arrival of said imported stock, said Allen carried them, as this respondent is informed and believes, to a breeding establishment he had at Black Rock, in the State of New York. That afterwards, as this respondent was informed and believes, said A. B. Allen sold a part of said Berkshire stock to the complainant, (R. H. Hendrickson,) and Andrew Campbell, of the town of Middleton, and State of Ohio, and took their notes therefor for the said several sums of one thousand dollars, five hundred dollars, and six hundred and twenty-five dollars; the first, payable in one day after date; the second, in one year after date; and the third, in one year after date; and all of them to the order of A. B. Allen; that immediately after taking said notes, said A. B. Allen, in pursuance of his said contract, endorsed said notes to this respondent, and delivered them to his said agent, R. L. Allen, for collection, and to meet his indebtedness as aforesaid; that said R. L. Allen has held said notes ever since then for that purpose, and had full control over them; that the part of said debt of A. B. Allen, which these notes were given to secure, has never been paid to this day, and this respondent looks to A. B. Allen, as endorser, and R. L. Allen, as his agent, to see that it is paid. This respondent further says, that he never saw any of said stock, named in said complainant's bill, and that he never owned the same; that it was bought by said A. B. Allen, and though (as he was informed and believes) said A. B. Allen considered equitably that the stock which the latter had bought with this respondent's money should belong to him until all said money advanced had been repaid, and so treated it with the complainant and said Andrew Campbell; yet this respondent avers, that said Allen had bought said stock in his own name, the legal title of the same was in him, and this respondent had no ownership whatever in it. The stock bought by Allen wholly belonged to him, and by the terms of the contract aforesaid, and by the understanding of the parties, all that this respondent could claim, or did claim, was, that said Allen should pay him out of the proceeds of the first sales. This respondent further says, the sale spoken of by said complainant in his bill was made wholly by said Allen of his own property, and that he knows nothing whatever of any of the promises, representations, and inducements alleged by said com-

plainant to have been made by said Allen. He also says, that all of the subsequent correspondence in reference to said sale, and the notes given therefor by said Hendrickson and Campbell, has been carried on by them with the said A. B. Allen, the endorser of said notes, and said R. L. Allen, who had charge of their collection, and who, as such, had an interest in getting them paid; and this respondent knows nothing respecting any of the circumstances of said sale, or the number, the prices, the ages, the lives, the deaths, the diseases, or the breeding capacity or incapacity of any of said stock, as in said bill is alleged, and cannot admit the same; all that this respondent felt interested in was the collection of these notes, which he had received as a bona fide endorsee, (the two last named before they were due,) for money actually paid by him, and which when paid were to be credited on the said debt of A. B. Allen. This respondent further says, that he knows nothing of the bill of sale referred in said complainant's bill, as exhibit "A," or any other notes than those above referred to as endorsed to him, or of any of the circumstances of said sale, nor can he admit of any of these allegations to be true. As already stated, this respondent knows nothing of the particulars of said sale, but he is informed and believes that all the allegations in said bill of fraudulent and false representations made by said A. B. Allen to Campbell and Hendrickson are false and wholly untrue. This respondent further states, that since these notes were given to him as aforesaid, said A. B. Allen has had no interest in, or control over them, beyond that of an endorser and a friend of this respondent, who wishes to see them paid; that they have ever since been in the possession of his said agent, R. L. Allen, until the latter sent them to Ohio for prosecution. This respondent admits, that he did bring suit thereon, and recover a judgment as in said bill is alleged, but of the conferences said complainant had with his attorney in reference to his defence to said suit, or of his labors and views in reference thereto, he knows and admits nothing. This respondent admits, that certain letters of Andrew Campbell were read by his counsel on the trial; but he also is informed and believes, that certain other letters, written by this complainant, were also read at that time, which were as good evidence as those of the said Campbell. And further, that this complainant, and that his counsel, L. D. Campbell, knew, long before the trial, that the counsel for this respondent had letters of said Campbell as well as of said complainant in his possession, and that no notice was ever served on this respondent, or, as he is informed and believes, on his counsel to produce the same. On the other hand, this respondent is informed and believes, that his counsel applied to said L. D. Campbell, and offered to show the same to him if the latter would show to him certain papers which the latter said he had, and wished to offer in evidence on the trial. And this respondent avers, that the ignorance alleged by said Hendrickson, in reference to said letters, was wholly voluntary.

This respondent cannot admit the alleged ignorance of said Campbell in reference to said stock, but he is informed and believes (and so

alleges the fact to be) that the letters of said complainant, (some of which were produced on the trial,) as well as those of said Campbell, written through a series of years after the sale, show that they were both intimately acquainted with said stock and placed a high value upon it, and that all the charges of said complainant of fraud and misrepresentation, and ignorance, are false. In reference to the account or claim that said complainant pretends to have against this respondent, he knows nothing of it, and cannot admit the same beyond those credits that were endorsed on said notes, and for these said complainant has had the full benefit in the said judgment. If said complainant has any legal claims against said A. B. Allen, he has his legal remedies, but this respondent denies all claim, account, or set-off against him, and calls for proof.

This respondent admits that said complainant did make the arrangement with E. Mills, esq., his counsel, as in said bill is alleged, and that he did give the notes and make the payments, and take the receipt stated; but this respondent is informed by his counsel, and charges the fact to be, that it was with the express understanding and agreement made with said Hendrickson, that he did not thereby release any of his rights under the said judgment; that said Hendrickson requested a release of the judgment, alleging as a reason that that would enable him to proceed immediately to secure his half the judgment against his co-defendant, Andrew Campbell, whom he at that time represented to be in failing circumstances, which request was refused.

This respondent further says, that he knows nothing of the alleged agreement referred to in said complainant's bill, as exhibit "G," or the charges made in reference thereto, and cannot admit any of the charges made in said bill in reference thereto, and calls for proof.

This respondent admits he was, and now is, a resident and citizen of Massachusetts, as in bill alleged, but denies that he has never been in the State of Ohio; on the other hand, he says that on or about the first day of June, 1845, and on or about the first day of July, 1845, and at various times since then, he has been within said State of Ohio. Respondent does not know and cannot admit said Campbell became insolvent before the rendition of said judgment, or died insolvent.

Respondent further says, that even if said complainant and said Campbell did have an account or claim against him, as said complainant in his bill alleges, (and which this respondent denies,) yet this respondent avers that an action did not first accrue within six years next before the filing of said complainant's bill, and he is advised by his counsel that it would be barred by the statute of said State of Ohio, of which he claims the benefit. And this respondent is advised and insists that the said complainant is not entitled to any relief against this respondent, touching the matters complained of in said bill, and claims the same benefit from this answer as though he had demurred to said bill; and having fully answered, prays to be dismissed with his reasonable costs.

SAM'L L. HINCKLEY.

STATE OF MASSACHUSETTS,
County of Suffolk, ss:

I, the above named Samuel L. Henckley, being first duly sworn, depose and say, that all the above several matters and things above set forth in the foregoing answer as from the information of others I believe to be true, and that all the other matters and things therein set forth are true in substance and in fact, to the best of my knowledge, information, remembrance and belief.

SAM'L L. HINCKLEY.

UNITED STATES OF AMERICA,
District of Massachusetts, city of Boston:

Sworn to before me by the said Samuel L. Hinckley, this third day of April, A. D. 1852.

GEO. S. HILLIARD,
A commissioner of the circuit court of the United States.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

I, Isaac O. Barnes, clerk of the circuit court of the United States, for the first circuit, Massachusetts district, do hereby certify that I am acquainted with the handwriting of George S. Hillard, esquire, whose name is subscribed to the annexed answer, and that the said signature of George S. Hillard, esquire, is his handwriting.

And I do further certify that the said George S. Hillard, esq., was at the time of writing the same a commissioner, duly appointed by the said court, pursuant to the acts of Congress in cases made and provided "for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States."

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, this third day of April, in the [SEAL.] year of our Lord one thousand eight hundred and fifty-two, and in the seventy-sixth year of the independence of the *of the* United States of America.

ISAAC O. BARNES, *Clerk.*"

And afterwards, to wit, at the April term of said court, in the year last aforesaid, this cause was continued; and now, to wit, at the October term of said court, in the year of our Lord one thousand eight hundred and fifty-two, the following final decree was entered in this case, to wit:

"This cause came on to be heard upon the bill of complaint, and the demurrer set up and insisted on by the defendant in his answer filed in this cause, and after hearing the arguments of counsel, the court find that there is no equity in the bill of complaint, and do order, adjudge and decree, that the injunction heretofore allowed in this cause be dissolved, and that the bill of complaint be dismissed at his costs; costs taxed to $73 87. And it is further ordered, that said complainant

have leave to appeal said cause, upon entering into bond with security to be approved by the clerk of this court in the sum of $3,000.

And afterwards, to wit, on the second day of November, in the year last aforesaid, the complainant filed in said clerk's office a certain appeal bond in the words and figures following, to wit:

Know all men by these presents, that we, Richard H. Hendrickson, and W. C. Henderson, and Daniel Hendrickson, are held and firmly bound unto Samuel L. Henckley in the sum of three thousand dollars, to the payment of which well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors, and administrators; sealed with our seals and dated this first day of November, A. D. 1852.

The condition of this obligation is such, that whereas the said Richard H. Hendrickson has taken an appeal from a certain decree rendered in favor of the said Samuel L. Henckley in the circuit court of the United States, for the district of Ohio, at the October term thereof, A. D. 1852, in a suit between the said Richard H. Hendrickson, complainant, and the said Samuel L. Henckley, defendant, to the Supreme Court of the United States. Now, if the said Richard H. Hendrickson shall pay the full amount of the condemnation money in said Supreme Court, and costs in case a decree shall be entered in favor of the appellee, then this obligation shall be void, otherwise in full force and virtue in law.

R. H. HENDRICKSON, [SEAL.]
W. C. HENDRICKSON, [SEAL.]
DANIEL HENDRICKSON. [SEAL.]

THE STATE OF OHIO,
Butler county, ss:

I, D. Heaton, a justice of the peace in and for the county and State aforesaid, do hereby certify that I am personally acquainted with the above W. C. and Dan'l Hendrickson, and that I consider them to be sufficient and responsible security for the amount of the foregoing bond.

DAVID HEATON, [SEAL.]
Justice of the peace.

THE UNITED STATES OF AMERICA,
District of Ohio, ss:

I, William Miner, clerk of the circuit court of the United States, for the district of Ohio, do hereby certify that the foregoing is a true copy of the record of a certain cause determined in said court at the October term thereof, A. D. 1852, wherein Richard H. Hendrickson was complainant, and Samuel L. Henckley was defendant, as the same appears among the records of said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at the city of Columbus, this 10th [SEAL.] day of February, A. D. 1853, and in the 77th year of the independence of the United States of America.

WM. MINER, *Clerk.*

RHODE ISLAND DISTRICT, *sc.*

At a circuit court of the United States, begun and holden at Providence, within and for the Rhode Island district, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and forty-nine.

Present, the honorable Levi Woodbury, associate justice Supreme Court United States.

The honorable John Pitman, United States district judge, for Rhode Island district.

James M. Clarke, esq., United States district attorney, for Rhode Island district.

George W. Jackson, esq., U. S. marshal, for Rhode Island district.

John T. Pitman, clerk.

In the record of the proceedings of the said court, among others, are the following, to wit:

Bill in equity.

JAMES STEVENS
vs.
GLADDING & PROUD.

Be it remembered, that on the first day of July, A. D. 1847, of the circuit court of the United States, for the Rhode Island district, the following bill was filed:

CIRCUIT COURT, RHODE ISLAND DISTRICT.

In chancery.

To the judges of the circuit court of the United States, for the district of Rhode Island.

James Stevens, of the town and county of Newport, State of Rhode Island, &c., and a citizen of the State of Rhode Island, &c., brings this his bill against Royal Gladding and Isaac T. Proud, doing business under the firm of Gladding & Proud, booksellers and stationers, successors of Isaac H. Cady, of the city and county of Providence, in the State of Rhode Island, &c., both citizens of the State of Rhode Island, &c.; and, thereupon, your orator complains and says:

That, according to an act of Congress of the United States, entitled "An act to amend the several acts respecting copyrights," approved on the third day of February, A. D. one thousand eight hundred and thirty-one, your orator obtained the sole and exclusive copyright for twenty-eight years, for printing, publishing, and selling, for his own exclusive benefit, "a Topographical Map of the State of Rhode Island and Providence Plantations;" the original certificate of said

copyright is hereunto attached, and is prayed to be taken as part of this bill.

And that your orator has fulfilled all the requirements of said act of Congress, and every other duty and thing on his part, to complete the copyright thereto.

Your orator further states, that he has never, at any time, given consent or permission to any person or persons whatever, to print, publish, and sell, any copy or copies of said map of the State of Rhode Island and Providence Plantations; but, on the contrary, your orator always has been, and still continues to be, the sole proprietor of the map aforesaid, and that he always has printed, published, and sold, and still continues to print, publish, and sell, the map aforesaid.

And your orator further states, that having great reason to believe and expect, that the sales of the copyright map aforesaid would be rapid, extensive, and profitable, and that, under the provisions and protection of the act of Congress above named, your orator should continue to print, publish, and sell the map aforesaid, and to enjoy the sole benefit, profit, and advantage arising therefrom, without his copyright thereto being violated or infringed, or having any molestation or hindrance therein, by any person or persons whatever, as in justice and equity ought to have been the case:

But now, so it is, that said Royal Gladding and Isaac T. Proud, of the city and county of Providence, in Rhode Island district, citizens of the State of Rhode Island, &c., booksellers and stationers, their servants, workmen, agents, and others, combining and confederating together, and with divers other persons at present unknown to your orator, and contriving how to wrong and injure your orator, by depriving him of the gains and profits which he was and is entitled to have and receive from the sole and exclusive privilege of printing, publishing, and selling of said topographical map of the State of Rhode Island and Providence Plantations, the said Royal Gladding and Isaac T. Proud, their servants, workmen, agents, and others, have, within the year last past, printed, published, and sold, and still to continue to print, publish, sell, and expose to sale, a certain other topographical map of the State of Rhode Island and Providence Plantations, of the same size, the same lettering, the same topographical characters, and the same general appearance in the title and in the body of the main design, as the true copyright map of your orator, excepting the addition of the names of some few and unimportant private places, the insertion of parts of two or three railroads, now built, or contemplated, and some small erasures; and many other wrongs and injuries have done in and about the premises, to the great damage and loss of your orator.

And your orator further states, that the copperplate engraving, from which his genuine copyright map was printed or impressed, has been for some time past wholly discarded and laid aside by him from any further use, it being his intention and determination to have the topographical map aforesaid etched and engraved on steel plates, for the

purpose of producing a more distinct appearance of the whole work, and for correcting any defect therein, and for inserting all the late improvements, railroads, factories, mills, and churches thereon.

That your orator has good reason to suspect and believe, that said Royal Gladding and Isaac T. Proud, their servants, workmen, agents, and others, have obtained the same identical discarded copperplate engraving, by some means to your orator wholly unknown, and have either used the same copperplate, or a similar one, for the purpose of printing therefrom their spurious, illegitimate, and pirated edition of the topographical map aforesaid; and that they have either printed and published, or have caused to be printed and published, at their own expense, the spurious, illegitimate, and pirated edition of the map aforesaid, in order to sell and dispose of the same at an underrate or cheaper price than that sold by your orator for their own benefit; thereby depriving your orator of the sole benefit and advantage of his copyright in and to said map; that a copy of said spurious, illegitimate, and pirated map has been purchased at the store of the said Royal Gladding and Isaac T. Proud, in the city of Providence, Rhode Island, for the sum of two dollars.

And your orator charges, that the said Royal Gladding and Isaac T. Proud, their servants, workmen, agents, and others, have sold and disposed of two thousand, or a great number of copies or impressions of the spurious, illegitimate, and pirated map aforesaid, and still continue to expose to sale the same, to the great damage and injury of your orator; all which actings and doings are contrary to equity and good conscience, and tend to the manifest wrong and disadvantage of your orator in the premises.

To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed; and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectfully required to answer, that is to say:

1. Whether any, and if any, what number of copies of the map above named you or your servants, workmen, agents, or others, have printed and published, or caused to be printed and published, by your or their order, or by either of their orders, for your and their, or either of their use and benefit?

2. Whether any, and if any, how many, and what number of copies of the map above named, have been sold or disposed of by you, or by others for you, for your or their benefit, or either of their benefit, and for what price or prices said maps have been sold for and continue to be sold for?

3. Whether any, and if any, what number of copies of said map above named remain unsold, and in whose hands or possession said maps, or any of them, remain?

4. Who printed the maps above named, and where, and at what place were they printed, by whom were said maps colored, by whom fitted up ready for sale, and at what price or prices?

5. Who engraved the copperplate from which the above named map was printed, and at what cost or price, in whole or in part?

6. Who drafted on the copperplate, or otherwise, the railroads and other alterations and additions to the map above named, and at what cost or expense?

7. In whose hands or possession is the copperplate on which you, or some other person or persons for you, have engraved the map above named?

8. Who were, and who now are your servants, workmen, agents, and others, who assisted you in printing, publishing, selling, and exposing to sale all or any of the above named maps, for your or their use or benefit or for either of their use or benefit, and who confederated with you and others, or with you alone, for the purpose of printing, publishing, vending, or exposing to sale for your or their profit, use, and benefit the map above named?

And that the said Royal Gladding and Isaac T. Proud, their servants, workmen, agents, and others, his confederates, may be respectively restrained, by order and injunction of this honorable court, from the further printing, publishing, selling, or exposing to sale, by themselves, their servants, or agents, the said map of the State of Rhode Island and Providence Plantations, or in any way being concerned in the printing, publishing, selling, or exposing to sale any copy or copies of said map, or of any other map or maps purporting to be, or resembling the map printed, published, and sold by your orator.

And that the said Royal Gladding and Isaac T. Proud, their servants, workmen, agents, and others, his confederates, may be decreed (according to the act of Congress herein above named) to deliver unto your orator "the plate or plates" on which he or they have printed or caused to be printed the spurious, illegitimate, and pirated maps of the State of Rhode Island and Providence Plantations; and also to deliver unto your orator "all and every sheet thereof so copied or printed," and that they be also decreed to pay into the hands of your orator the forfeiture of "one dollar for every sheet of said map which they have printed or caused to be printed or published or exposed to sale, one moiety thereof to your orator, and the other moiety to the use of the United States."

May it please this honorable court to grant unto your orator a writ of subpœna, to be directed to the said Royal Gladding and Isaac T. Proud, their servants, workmen, agents, and others, thereby commanding them and those, at a certain day, and under certain pains therein to be limited, personally, to be and appear before this honorable court, and then and there full, true, direct, and perfect answers make to all and singular the premises; and further to stand to, perform, and abide the further order, direction, and decree therein, as to this honorable court shall seem meet, and that your orator may have such other relief in the

1304.

premises as the nature and circumstances of the case may require, and to this honorable court may deem meet; and your orator shall ever pray.

NOTE.—The defendants *is* required to answer the interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, herein above inserted.

JAMES STEVENS.

RHODE ISLAND DISTRICT, *sc.*

Clerk's office, circuit court, at Providence, July 1st, 1847.

Then personally came James Stevens, subscriber to the foregoing bill, and made solemn oath, that the facts and statements therein contained were true and correct, according to the best of his knowledge and belief.

Before me, JOHN T. PITMAN, *Clerk.*

Fees, 25 cents—paid by James Stevens.

"DISTRICT OF RHODE ISLAND, *to wit:*

"Be it remembered, that on the twenty-third day of April, anno Domini one thousand eight hundred and thirty-one, James Stevens, of the said district, hath deposited in this office the title of a map, the title of which is in the words following:

'A Topographical Map of the State of Rhode Island and Providence Plantations, surveyed, trigonometrically and in detail, by James Stevens, topographer and civil engineer, Newport, Rhode Island, 1831,' the right whereof he claims as author, in conformity with an act of Congress, entitled 'An act to amend the several acts respecting copyrights.'

(Signed) BENJAMIN COWELL, [L. S.]
"*Clerk of the Rhode Island district.*"

Subpœna.

RHODE ISLAND DISTRICT, *sc.*

The President of the United States of America, to Royal Gladding and Isaac T. Proud, of the city and county of Providence, in the [L. S.] State of Rhode Island, booksellers and stationers, doing business under the firm of Gladding & Proud, both citizens of the State of Rhode Island, &c., greeting:

For certain causes offered to our circuit court, for the first circuit, within and for the Rhode Island district—in chancery:

We hereby command and strictly enjoin you, and each of you, that laying aside all other matters and things, and notwithstanding any other excuse, you, and each of you, personally appear at the clerk's office of said court, in Providence, on Monday, the third day of August next, being the rule day of said court, and then and there full, true, and per-

fect answer make upon your several corporal oaths to the bill of complaint of James Stevens, of the town and county of Newport, State of Rhode Island, &c., and a citizen of the State of Rhode Island, &c., now filed of record in the clerk's office of said court, and to do and receive whatever our said court shall order against you in the premises in this behalf; and hereof fail not, under the pains and penalties that may accrue in consequence of neglect thereof.

And the marshal of said Rhode Island district, or his deputy, is hereby commanded to make service of this writ by reading the same to the said Royal and Isaac T., or by leaving a true and attested copy hereof at their several last and usual places of abode, twenty days before the rule day aforesaid.

Witness the honorable Roger B. Taney, our chief justice, at Providence, this second day of July, A. D. 1847.

JOHN T. PITMAN, *Clerk.*

MEMO.—The appearance of the respondents in the suit is to be entered in the clerk's office on or before the return day of this writ, otherwise the bill may be taken pro confesso as against those not appearing.

UNITED STATES OF AMERICA,
Rhode Island district, sc.

PROVIDENCE, *July 2d*, 1847.

Made service of the within subpœna by delivering in hand of the within named Gladding & Proud a true copy hereof.

B. ANTHONY,
U. S. marshal, R. I. district.

Fees—service - - -	$4 00
Copies - - -	1 00
Travel - - -	10
	$5 10

And on the second day of said July, a petition for injunction was filed, as follows, viz:

Petition for injunction.

RHODE ISLAND DISTRICT.

To the judge of the district court of the United States, for the Rhode Island district.

Whereas your petitioner, James Stevens, of the town and county of Newport, in the State of Rhode Island, &c., a citizen of the State of Rhode Island, &c., hath brought his bill in chancery, in the circuit court of the United States, in the Rhode Island district, against Royal Gladding and Isaac T. Proud, of the city and county of Providence, in

the State of Rhode Island, booksellers and stationers, doing business under the firm of Gladding & Proud, both citizens of the State of Rhode Island, &c., in which bill he has prayed for a writ of injunction to restrain the infringement of a copyright granted to your petitioner, under an act of Congress of the United States entitled "An act to amend the several acts respecting copyrights," approved the third day of February, anno Domini 1831, for the sole right and liberty as author and proprietor, to print, publish, and sell, for his own exclusive profit, benefit, and advantage, a topographical map of the State of Rhode Island and Providence Plantations, for the term of twenty-eight years; in which bill in chancery, your petitioner has prayed the court aforesaid, that the said Royal Gladding and Isaac T. Proud, their servants, workmen, agents, and others, may be restrained by the order and injunction of said court, from the further printing, publishing, selling, or exposing to sale, the said topographical map of the State of Rhode Island and Providence Plantations, or in any way being concerned in the printing, publishing, selling, or exposing to sale, any copy or copies of said map, or of any other map or maps purporting to be, or resembling the map printed, published, and sold by your petitioner.

And, forasmuch as your petitioner has not had reasonable time to apply to the circuit court of the United States for the writ of injunction, according to the act of Congress of the 13th of February, 1807, he therefore hereby petitions this honorable court to grant unto him the order of injunction prayed for in his said bill.

JAMES STEVENS.

Notice on petition.

RHODE ISLAND DISTRICT, *sc.*

To Royal Gladding and Isaac T. Proud, of the city and county of Providence, in the State of Rhode Island, booksellers and [L. S.] stationers, doing business under the firm of Gladding & Proud, greeting:

Whereas James Stevens, of the town and county of Newport, in said State of Rhode Island, has filed in the circuit court of the United States within and for the Rhode Island district, a bill in equity against you, relative to a certain copyright granted to said Stevens, under an act of Congress of the United States, and which is more fully set forth on said bill.

And has also filed before our district judge for said district, (not having had reasonable time to apply to said circuit court,) a petition wherein he sets forth and prays that you, your servants, workmen, agents, and others, may be restrained from further printing, publishing, selling, or exposing to sale, the topographical map of the State of Rhode Island and Providence Plantations, or maps resembling the same, which he has said copyright for.

You are, therefore, hereby notified, that our said judge will hear

said petition at the district court rooms in Providence, on Tuesday, the 6th day of July instant, at 11 o'clock, a. m., at which place and time you are notified to appear, if you have any objection to the granting said petition.

Dated at Providence, this second day of July, A. D. 1847.

JOHN T. PITMAN,
Clerk of district court for Rhode Island district.

UNITED STATES OF AMERICA,
Rhode Island district, sc.

July 2d, 1847. Made service of the within monition by delivering in hand of the within named Gladding & Proud a true copy hereof.

B. ANTHONY, *United States marshal.*

Fees - - - $4 00.
Copies - - 1 00.

Affidavit of Royal P. Gladding.

RHODE ISLAND DISTRICT, *sc.*

Circuit court of the United States, for Rhode Island district.

November 7, 1847.—In equity.

In the matter of the injunction in case

JAMES STEVENS
vs.
GLADDING & PROUD.

Royal P. Gladding, of Providence, of the firm of Gladding & Proud, booksellers, &c., maketh oath and saith, that the bookstore price of the first edition of Stevens' map of Rhode Island, as sold under said Stevens' direction, was three dollars per copy, and that this edition did not exceed a thousand copies, as this affiant has been informed and believes; the sale consumed a period of nearly sixteen years, from 1830 to 1846; that the last eighteen months the booksellers' price of the new and improved edition of said map, published by Isaac H. Cady, has been two dollars per copy, and that said map cannot be profitably sold at a greater price; that the price of three dollars would be very high in comparison with the price of other maps, and that the price of two dollars would be full as high as it should be, in comparison with the price of other maps; that the season of sale of this and other maps has now come on, the public and other schools now supplying themselves for the winter, and that the loss of this season of sale would be greatly detrimental to whomsoever is interested in the profits of the sale of this map; that said map is frequently called for, and that in consequence of said injunction, your affiant has been obliged to refuse many applications for purchase.

ROYAL P. GLADDING.

Providence, November 24, 1847.

RHODE ISLAND DISTRICT, *sc.*

In Providence, this twenty-fourth day of November, A. D. 1847, subscribed and sworn to by Royal P. Gladding.

Before me, HENRY MARTIN,
Public notary.

Affidavit of Charles Burnett, jr.

RHODE ISLAND DISTRICT, *sc.*

Circuit court of the United States, within and for the Rhode Island district, November 7, 1847.

In equity.

In the matter of the injunction in the case

JAMES STEVENS
vs.
GLADDING & PROUD.

Charles Burnett, jr., of Providence, bookseller, maketh oath and saith, that, as he believes, the first edition of Stevens' map of Rhode Island was sold at the price of three dollars per copy, as the retail bookstore price; that the retail price of Cady's edition of said map has been two dollars per copy, ever since the same was published, this affiant having sold said map at that price as the usual price of the same; that the price of three dollars per copy, for said map, would be high in comparison with the prices of other maps, and that in his opinion two dollars per copy would be a fair retail price for the same; that the present injunction against the sale of said maps is greatly detrimental to interests of those who may be concerned in the profit of the sale of the same, as said map will, if the sale is long delayed, be out of date; that the season for the sale of this and other maps has now come on, and said map is much inquired for, and the loss of it must prove injurious to all concerned in said maps.

CHARLES BURNETT, JR.

RHODE ISLAND DISTRICT, *sc.*

In Providence, this twenty-fourth day of November, A. D. 1847, subscribed and sworn to by Charles Burnett, jr.

Before me, HENRY MARTIN,
Public notary.

At chambers, July 6th, 1847.

On motion of plaintiff for an injunction, due notice thereof having given to the defendants, upon a hearing thereof, ordered by the consent of parties; that the injunction prayed for in the within bill be granted, and the same is granted until the further order of the circuit court.

JOHN PITMAN,
District judge.

And on the sixth day of October, 1847, the following answer was filed:

Answer of Gladding & Proud.

Circuit court for the Rhode Island district.

In equity.

JAMES STEVENS
vs.
ROYAL GLADDING & ISAAC T. PROUD.

The answer of said Royal Gladding and Isaac T. Proud to said bill, or so much thereof as they are advised it is material or necessary for them to make answer unto, saving to themselves all exceptions to said bill for or on account of any informalities or insufficiencies therein, answering, they say, that in receiving and selling all the maps referred to in said bill, these defendants received the same and sold the same as the agents of Isaac H. Cady, and under his right and authority to receive and sell the same, and not otherwise.

And these defendants further answering say, that they have been informed and believe, that said Isaac H. Cady has, and had good right to make, print, and sell all the maps referred to in said bill, and delivered to and sold by these defendants; and so state and charge the fact to be, in that these defendants have been informed and believe, and so charge the fact to be, that Sarah Stevens, of Fall river, in the State of Massachusetts, on or about the 11th day of April, 1846, having recovered a judgment against said James Stevens, for one hundred and seventy-six dollars damages, and eighteen dollars and twenty-three cents costs of suit, before the court of common pleas, holden at Taunton, within and for the county of Bristol, in said State of Massachusetts, on the second Monday of March, 1846, which court had jurisdiction of said cause, took out from said court a writ of execution duly issued by said court, under the seal thereof, and signed by the clerk thereof, and dated the 11th day of April, 1846, all in due form of law, as will appear by the records and files of said court, exemplified copies of which are ready in court to be produced, as this court may direct, commanding the sheriff of the county of Bristol aforesaid, that of the goods and chattels and lands of the said James Stevens, within said county, he should cause to be paid and satisfied unto said Sarah Stevens, at the value thereof in money, the said sum of one hundred and ninety-four dollars and twenty-three cents in the whole, and twenty-five cents more for said writ of execution, and thereof also to satisfy himself his fees in the premises, and for want of such goods, chattels, or lands of the said James Stevens, by him shown or found within his precincts, to the acceptance of the said Sarah Stevens, the sheriff was commanded in and by said writ to take the body of said James Stevens, and him commit to the jail in Taunton or New Bedford, in said county of Bristol, and him detain in custody within said jail, until

be should pay the sums above mentioned, with the fees thereon, or be lawfully discharged by said Sarah Stevens, or by order of law; and that said sheriff should make due return of said writ with his doings thereon; all which will more fully appear by the records and files of said court of common pleas, exemplified copies of which are ready in court to be produced, as this court may direct.

And these defendants further answering say, that said James Stevens neglected to pay said debt and satisfy said execution, but left at Fall river aforesaid, within the precincts of said sheriff, to whom said execution was delivered for collection, said copperplate named in said bill, with said map engraved thereon, to be levied upon and sold to satisfy, from the sale thereof, said execution, and made no other provisions for the satisfaction and payment of the same; and said sheriff at said Fall river, on or about the 25th day of April, 1846, levied said execution upon said copperplate with said map engraved thereon, and duly posted and advertised the same for sale to satisfy said execution; and after the expiration of more than four days after said levy, and after giving said James Stevens full opportunity to pay and satisfy said execution, and save said property from being sold, if he had chosen so to do, said sheriff on or about the 6th of May, 1846, at Fall river aforesaid, sold at public auction said copperplate, with said map engraved thereon, to the said Isaac H. Cady, for the sum of two hundred and forty-five dollars, that being the full value thereof with said map engraved thereon, and he being highest bidder for said property; and on the 9th day of said May, said Cady paid said sheriff said sum of two hundred and forty-five dollars, for which he had bid off said property, and took his receipt therefor, and received said copperplate with said map engraved thereon from said sheriff as his property, and ever since said Cady hath had and held and used said property as his own; and that said Cady, since said copperplate hath been owned and possessed by him, hath used the same to print maps therefrom, and hath printed all the maps he hath printed, made, or sold from said plate, and used no other plate for printing said maps. And that all the maps which these defendants have ever received or sold from said Cady, or any one else, were printed and made from and by the use of said copperplate, with the knowledge and legal assent of said James Stevens given as aforesaid.

And these defendants further answering say, that with the money received from said Cady in payment of said plate and said engraving thereon, said sheriff paid said debt and satisfied said execution, and said James Stevens became thereby discharged therefrom; and after paying and satisfying said execution, said sheriff returned to said Stevens the balance over and above paying the same, amounting to about sixty-two dollars, which said Stevens accepted, as these defendants have been informed and believe.

And these defendants further answering say, that said copperplate without said map engraved thereon would have been of small value, as these defendants believe, not over ten or fifteen dollars; and that the principal value of said copperplate, so as aforesaid purchased by said

Cady, arose from the engraving thereon, as said James Stevens well knew, and that the value of said plate, with said map engraved thereon, has been applied in payment of said James Stevens's debt, except such portion thereof as he received from said sheriff after said sale.

And these defendants most respectfully submit to this honorable court, that said Isaac H. Cady, by his aforesaid purchase of said copperplate, with said map aforesaid thereon, in manner aforesaid, acquired a right to use the same for printing maps of said State of Rhode Island, in manner aforesaid, and had good right to employ these defendants to sell the same.

And these defendants aver, that all the maps they have received for sale, or sold, were received from said Isaac H. Cady, and were sold under his right to make, print, and sell the same.

And these defendants submit to this honorable court, that by reason of the facts aforesaid, and the purchase of said plate and said map engraved thereon, these defendants become possessed of the right to print and publish said maps of the State of Rhode Island and sell the same, and that said Stevens hath virtually, impliedly, and legally assented thereunto. And as to any fraud or confederacy, charged in said bill, these defendants say the same is not true; and these defendants submit to this honorable court, that they are not bound to make any other or further answer to said bill, and pray to be dismissed hence with their costs in this behalf expended.

ROYAL P. GLADDING,
ISAAC T. PROUD.
TILLINGHAST & BRADLEY,
Solicitors for respondents.

RHODE ISLAND DISTRICT, *sc.*

Clerk's office, circuit court, at Providence, October 6th, 1847.

Then personally appeared the subscribers to the foregoing answer, and severally made oath that the facts and statements therein contained were true and correct, according to the best of their knowledge and belief.

Before me, JOHN T. PITMAN, *Clerk.*

And on the 6th day of November next, the complainant replied as follows:

Replication.

UNITED STATES CIRCUIT COURT, *Rhode Island district.*

In equity.

The replication of James Stevens, complainant, to the answer of Royal Gladding and Isaac T. Proud.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith, that he will aver and prove his

said bill to be true, certain, and sufficient in law to be answered unto; and that the said answer of said defendants is uncertain, untrue, and insufficient in law to be replied unto by this repliant. Without this, that any other matter or thing whatever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed, or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

JAMES STEVENS.

And at the November term, 1847, the following order was entered:

"Injunction so modified, as to allow defendants to sell maps, upon giving bond not to sell them for less than $2 50, and to pay the money into court, to abide the result of the suit."

At the June term, 1848, on motion of complainant, by agreement, the foregoing replication was withdrawn, and the following exceptions to the answer were put in:

Exceptions.

CIRCUIT COURT OF THE UNITED STATES,
Rhode Island district.

In equity.

Between James Stevens, complainant, and Royal Gladding and Isaac T. Proud, defendants.

An exception taken by said complainant to the insufficient answer of said defendants: For the said defendants have not, to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answer made to the several interrogatories hereinafter numbered and set forth from 1 to 8, inclusive, as by the note in the bill of this complainant they are required to answer, that is to say:

1. Whether any, and if any, what number of copies of the map above named, you or your servants, workmen, agents, or others, have printed, or caused to be printed, by your or their order, or by either of their orders, for your, their, or either of their use or benefit?

2. Whether any, and if any, what number of copies of the map above named have been sold or disposed of by you, or by others for you, for your own benefit, their, or either of their benefit; and for what price or prices said maps have been sold for and continue to be sold for?

3. Whether any, and if any, what number of copies of the above named maps remain unsold, and in whose hands or possession said maps, or any of them, are or remain?

4. Who printed the maps above named, and where, and at what

place were they printed; by whom were said maps colored; by whom were they fitted up ready for sale; and at what price or prices?

5. Who engraved the copperplate from which the above named map was printed; and at what cost or price, in whole or in part?

6. Who drafted on the copperplate or otherwise the railroads and other alterations and additions to the map above named, and at what cost or expense?

7. In whose hands or possession is the copperplate on which you, or some other person or persons for you, have engraved the map above named?

8. Who were, and now are your servants, workmen, agents, and others, who assisted you in printing, publishing, selling, and exposing to sale, all or any of the above named maps, for your or their use or benefit, or for either of their use or benefit; and who confederated with you and others, or with you alone, for the purpose of printing, publishing, vending, or exposing to sale, for your or their profit, use, and benefit, the map above named?

In all which particulars, the said complainant excepts to the answer of the said defendants as evasive, imperfect, and insufficient; and humbly prays that the said defendants may be compelled to put in full and sufficient answers thereto.

JAMES STEVENS, *Complainant.*

And it was further ordered at the same term, that the respondents have leave to sell maps, upon giving bond in a sum to the satisfaction of the clerk that the proceeds of the sale abide the result of the suit.

And a bond was afterwards given in the words following, to wit:

Bond.

Know all men by these presents, that we, Royal Gladding and Isaac T. Proud, of the city and county of Providence, in the State of Rhode Island, booksellers and stationers, doing business under the firm of Gladding & Proud, as principal, and Shubael Hutchins, of said city, county, and State aforesaid, as surety, are held and firmly bound unto James Stevens, of the town and county of Newport, in said State of Rhode Island, in the sum of three thousand dollars, to be paid to said Stevens, his executors, administrators, and assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this twenty-fourth day of August, A. D. one thousand eight hundred and forty-eight.

The condition of the above obligation is such, that whereas the said Stevens is now prosecuting before the circuit court of the United States, for the first circuit and for the Rhode Island district, a bill in equity against the said Gladding & Proud, for matters growing out of the printing and publishing a map of the State of Rhode Island and Providence Plantations, by said Gladding & Proud, the copyright of said

map being claimed by said Stevens, and an injunction having been laid heretofore upon the said Gladding & Proud against publishing, selling, &c., the said maps, is now by agreement of the parties and order of court so modified, that the said Gladding & Proud "have leave to sell said maps upon giving bond, in a sum to the satisfaction of the clerk, that the proceeds of the sale abide the result of the suit."

Now, therefore, if the said Gladding & Proud shall well and truly account for the entire proceeds of the sales made by them of the map aforesaid, and pay over the whole or such part of said proceeds as they may by the decree of said circuit court, or an appeal by the appellate court, be decreed to pay, then the before written obligations shall be void and of no effect, otherwise shall remain in full force and virtue.

ROYAL P. GLADDING, [SEAL.]
ISAAC PROUD, [SEAL.]
SHUBAEL HUTCHINS. [SEAL.]

Signed, sealed, and delivered in presence of—(the words "made by them," on the 2d page, being first interlined)—
L. B. FREEZE.

Witness to signature of Shubael Hutchins—
EDWARD A. GREENE.

Approved, JOHN T. PITMAN, *Clerk.*

At the following rule day in October, 1848, the following orders were entered:

Rule day, October, 1848.

Walter S. Burges, esq., who has heretofore been solicitor of record in the above cases, having moved at the June term, 1848, to have his name stricken from said cases on the docket, it is now ordered that his name be taken off as of that term.

The respondents move in both said cases for surety for costs. It is ordered that surety be given in the sum of $200, to the satisfaction of the district clerk within twenty days.

Exceptions overruled without costs, and replication ordered to be filed in fifteen days, otherwise causes to stand on bill and answer.

In accordance with the foregoing order, the surety required was given as follows:

Bond for costs.

Know all men by these presents, that we, James Stevens, of Newport, in the Rhode Island district, as principal, and Jonathan T. Almy, of the same Newport, merchant, as surety, are held and stand firmly bound unto Royal Gladding and Isaac T. Proud, doing business under the firm of Gladding & Proud, booksellers, of the city and county of Providence, in said district, in the full and just sum of two hundred dol-

lars, to the payment of which sum to the said Gladding & Proud, their executors, and administrators, we hereby bind ourselves, our executors, and administrators by these presents.

The condition of the above obligation is such, that whereas James Stevens, of Newport, in said district, has commenced a suit by bill in equity, and which is now pending in the circuit court of the United States for said Rhode Island district, against the said Gladding & Proud, and the said court has ordered that the said James Stevens shall give to the said Gladding & Proud surety for costs in said suit; now, if the said Stevens, as principal, and Jonathan T. Almy, as surety, shall well and truly pay, or cause to be paid, all costs which the said James Stevens shall by any decree or order of said court be adjudged to pay in said suit, then this obligation to be void, otherwise to remain in full force.

Sealed with our seals, and dated this eleventh day of October, 1848.

JAMES STEVENS, [SEAL.]
JONATHAN T. ALMY. [SEAL.]

Witness—E. TREVETT,
JOHN STEVENS.

And at the same term, a motion was made by the complainant for a rehearing, which was afterwards withdrawn, and leave given to amend bill in sixty days, and also to amend answer, if necessary.

And afterwards, at the same term, on motion of respondent, it was ordered, that the complainant, he not having amended his bill as above allowed, file his replication in thirty days, in default whereof the cause to be set down for hearing at the June term on bill and answer.

And at the April rule day, 1849, the complainant filed in court the following petition for a commission to take testimony:

Petition for commission.

To the honorable circuit court of the United States, for the Rhode Island district.

The complainant in this bill prays a commission to issue to take testimony, and proposes that the testimony be taken upon oral interrogatories, by the parties or their agents, without filing any written interrogatories.

JAMES STEVENS, *for himself.*

To JOHN T. PITMAN, esq.,
Clerk circuit court, Rhode Island district.

Which was not acted upon, because no replication had been filed within the time specified. On the 21st of said April the following replication was filed:

Replication.

UNITED STATES CIRCUIT COURT,
Rhode Island district.

JAMES STEVENS
vs.
GLADDING & PROUD. } In equity.

The replication of James Stevens, complainant, to the answer of Royal Gladding and Isaac T. Proud: This repliant saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of said defendants is uncertain, untrue, and insufficient in law to be replied unto by this repliant; without this, that any other matter or thing whatever, in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

JAMES STEVENS, *Complainant.*

And another petition for a commission to take testimony was filed April 25th, as follows:

In bills. JAMES STEVENS
vs.
ISAAC H. CADY,

AND SAME
vs.
GLADDING & PROUD.

When on the rule day in October last, bonds were required of me, it was inquired how many depositions would probably be taken; my answer was, "not exceeding three or four;" then the bonds were ordered to be given for two hundred dollars; I inferred from this, that I could take testimony at any time when the commission should issue; and in consequence of my exceptions being overruled, that the replications which were filed before, and which were, and still are, filed with the papers in these bills, would attach. In fact, I left those replications among the papers with the bills, for the purpose of their being ready filed in court, to be used when required. At the November term of this court I applied for and obtained permission to amend my bill, and it was to have been done in sixty days, or go to trial on bill and answer.

At the expiration of the sixty days I was senseless with sickness, and remained in bed 100 days, and am still too unwell to leave my room.

I applied on the 30th March to the circuit court for commissions to issue to take testimony, and sent my application to the clerk of this court on that day, and requested the clerk to enter on the order book "The complainant in bills, James Stevens vs. Isaac T. Cady, Same vs. Gladding & Proud, applies for commissions to issue to take testimony in said causes." Rule day, April, 1849. The commission may be joint. This complainant now prays this honorable court, that he may now file his replications, as those already filed have been considered not in proper time, and that the objections of these respondents' counsel to filing these replications be overruled, and that the commissions issue.

JAMES STEVENS.

Rule day, May, 1849.

And at the rule day in June following, the respondents assented to the issuing of the commission under the following terms:

Agreement of respondents.

We agree that a commission may issue to take the testimony of witnesses on interrogatories in the cases, Stevens vs. Cady, and Stevens vs. Gladding & Proud, on condition that the cases shall be tried at the next term of the circuit court, if the respondents claim a trial, and that reasonable notice and accommodation be extended to respondents and counsel in taking the testimony.

TILLINGHAST & BRADLEY,
For respondents.

Providence, June 5th, 1849.

Whereupon, the following commission issued:

Commission.

[L. S.] UNITED STATES OF AMERICA,
Rhode Island district, sc.

Circuit court of the United States, within and for the Rhode Island district.

To JOSEPH S. PITMAN,
Of Providence, in said district.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of Charles E. Newell, to be used in a certain cause in equity, now pending in said court, wherein James Stevens is complainant, against Gladding & Proud, respondents.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to

writing, and to be subscribed by each of said witnesses in your presence. And the same so taken and subscribed to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, as soon as may be.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, our chief justice at Providence, this ninth day of June, in the year of our Lord one thousand eight hundred and forty-nine.

JOHN T. PITMAN, *Clerk.*

N. B.—You shall not, except by the consent of the parties, in writing, permit either party to attend at the taking of the depositions, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving their deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross interrogatories to the deponents in their order, and take the answer of the deponent to each, fully and clearly.

RHODE ISLAND DISTRICT, *sc.*

Clerk's office, circuit court, at Providence, June 13th, 1849.

Then personally appeared the above named Joseph S. Pitman, and made oath that he would faithfully and impartially discharge his duties according to the best of his skill and understanding.

Before me, JOHN T. PITMAN, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
Rhode Island district.

Interrogatories to be propounded to Charles E. Newell, of the city and county of Providence, district of Rhode Island, in bill, James Stevens vs. Gladding & Proud, booksellers and stationers.

Did you or not purchase of Gladding & Proud, booksellers and stationers, in the city of Providence, district of Rhode Island, one of the maps of the State of Rhode Island, &c., published by Isaac H. Cady, A. D. 1846? If yea, when, where, and at what price; can you show said map; have you any means of identifying said map?

JAMES STEVENS.

Cross interrogatories waived.

TILLINGHAST & BRADLEY,
For respondents.

To the honorable the circuit court of the United States, for the Rhode Island district.

Joseph S. Pitman, the within named commissioner, respectfully reports, that on the fourteenth day of June, A. D. 1849, Charles E. Newell, within named, having been first duly summoned, appeared at his office to give evidence in the cause in equity, now pending in the circuit court for the district aforesaid, wherein James Stevens is complainant, and Gladding & Proud are respondents; and having been duly sworn to testify the truth, the whole truth, and nothing but the truth, gave his deposition hereto annexed, which was reduced to writing by me in his presence, and signed by him in my presence, no other person being present.

JOSEPH S. PITMAN, *Commissioner.*

Providence, June 14, 1849.

Commissioner's fees—

One deposition - - -	$2 00
Citation to witness - -	50
	$2 50

I, Charles E. Newell, of lawful age, of the city and county of Providence, and State of Rhode Island, being first cautioned and sworn, on oath depose and say:

Interrogatory propounded by James Stevens.

Did you or not purchase of Gladding & Proud, booksellers and stationers, in the city of Providence, district of Rhode Island, one of the maps of the State of Rhode Island, &c., published by Isaac H. Cady, A. D. 1846? If yea, when, where, and at what price; can you show said map; have you any means of identifying said map?

Answer. I did purchase of Gladding & Proud such map; it was the latest edition of Stevens's map. I purchased it the first day of July, 1847, at their bookstore. I paid two dollars for it. I can show the map. I have it in my office. I have a private mark upon the map by which I can identify it.

CHARLES E. NEWELL.

Witness fees—One day's attendance, $1 25.

Subscribed and sworn to this fourteenth day of June, A. D. 1849.
Before me, JOSEPH S. PITMAN,
Commissioner.

And the cause having been continued to the present term, is now called for hearing upon the bill, answer, and other pleadings in the case, and is heard, and the following decree entered:

Decree.

This cause came on to be heard on the bill, answer, replication, depositions, and other papers in the case, and after the hearing it is ordered by the court that the following entry be made on the minutes in relation to the same:

"The court differ in opinion as to the effect of the sale of the copperplate, but agree that injunction cannot issue without a return of the money paid for the plate."

And afterwards at the same term, Mr. Stevens having the election to return the price of the plate or not, elected not to return the same, upon which the respondents move that the bill be dismissed, which is dismissed as follows:

This cause having been heard on the bill, answer, and other pleadings therein, and the complainant having refused to return the price of the plate of the map in question as required by the court:

It is now on motion of the respondents, and by the consideration of the court, ordered, adjudged, and decreed, that the said bill be, and the same is hereby, dismissed with costs.

November term, A. D. 1849.

Ordered to be entered as the decree of the court.

JOHN T. PITMAN,
Clerk circuit court.

Such were the proceedings in the case up to the November term, A. D. 1853, when the following was filed in court:

Petition of appeal.

RHODE ISLAND DISTRICT, *sc.*

Circuit court of the United States, November term, A. D. 1853.

To the honorable circuit court of the United States, in and for the Rhode Island district.

Respectfully represents:

James Stevens, of the town and county of Newport, in the district of Rhode Island, that on the twenty-fourth day of November, A. D. 1849, a decree was made and pronounced by said court, in a certain cause in equity pending in said court, wherein your petitioner was complainant, and Royal Gladding and Isaac T. Proud, of the city and county of Providence, in said Rhode Island, booksellers and stationers, doing business under the firm of Gladding & Proud, were respondents, whereby said cause was ordered to be dismissed.

And said James Stevens is now desirous of and hereby claims an appeal from said decree to the Supreme Court of the United States, next to be holden at the city of Washington, in the District of Columbia, on the first Monday of December, A. D. 1853.

Wherefore he asks that said appeal be allowed under the usual rules.

(Signed) JAMES STEVENS.

November term, 6th day, 1853.

Ordered, that the appeal be allowed upon bond being filed with sufficient surety in the sum of two hundred dollars, to be approved by the clerk.

B. R. CURTIS,
Associate justice, S. C. U. S.

Bond for costs.

RHODE ISLAND DISTRICT.

Know all men by these presents, that I, James Stevens, as principal, and Jonathan T. Almy, as surety, both of Newport, in said district, are held and firmly bound unto Royal Gladding and Isaac T. Proud, of the city and county of Providence, in said district, in the full and just sum of two hundred dollars; to the payment of which sum, unto the said Royal Gladding and Isaac T. Proud, their executors, and administrators, we hereby bind ourselves, our executors, and administrators, by these presents:

The condition of the above obligation is such, that whereas, the said James Stevens has appealed (in) a certain cause in equity wherein the said Stevens is complainant, and the said Gladding and Proud are respondents, from a decree rendered therein dismissing said bill at the November term, A. D. 1849, of said court to the Supreme Court of the United States, next to be holden at Washington, in the District of Columbia, on the first Monday of December next.

Now, therefore, if the said James Stevens shall prosecute his said appeal before the Supreme Court of the United States with effect, and shall well and truly pay all such costs and damages as shall be adjudged for him to pay by the said Supreme Court, or by said circuit court, by reason of said appeal, then the before written obligation shall be void and of no effect, otherwise it shall remain in full force and effect.

Sealed with our seals, and dated the twenty-eighth day of , A. D. eighteen hundred and fifty-three.

JAMES STEVENS, [L. S.]
JONATHAN T. ALMY. [L. S.]

Signed, sealed, and delivered in presence of—
JOSEPH BATEMAN,
CHARLES BROWNELL.

Approved, November 29th, 1853.

J. T. PITMAN, *Clerk.*

RHODE ISLAND DISTRICT, *sc.*

Clerk's office, circuit court, at Providence, November 30th, 1853.

I, John T. Pitman, clerk of said court for said district, do hereby certify, that the foregoing twenty-nine (though paged 31) pages contain a

true transcript from the record of the case, James Stevens vs. Gladding & Proud, disposed of November term, 1849; and also of the petition for appeal and appeal bond, duly examined and compared.

In testimony whereof I have hereunto set my hand and the [SEAL.] seal of said circuit court, on the day and year above written.

JOHN T. PITMAN, *Clerk.*

RHODE ISLAND DISTRICT, *sc.*

[L. S.] The President of the United States of America, to the marshal of said district, or to his deputy, greeting:

You are hereby required to make known to Royal Gladding and Isaac T. Proud, of the city and county of Providence, in the State of Rhode Island, now or late booksellers and stationers, doing business under the firm of Gladding & Proud, that in a certain cause in equity, disposed of at the November term, A. D. 1849, of the circuit court of the United States, within and for the Rhode Island district, wherein James Stevens, of the town and county of Newport, in said State of Rhode Island, was complainant, and the said Gladding & Proud were respondents. The said complainant has appealed from the decree of the said circuit court rendered against him, unto the Supreme Court of the United States, next to be holden at Washington, within and for the said United States, on the first Monday of December next, which appeal has been duly allowed.

And that they, the said Gladding & Proud, then and there be before the said Supreme Court, within thirty days after notice hereof, to hear the proceedings on the said appeal, if it shall seem expedient unto them, and further to do and receive what in the said Supreme Court shall be ordered, adjudged, and decreed in this behalf; and make due return of this citation with your doings thereon.

In witness whereof I have caused the seal of the said circuit court to be hereunto affixed, and have subscribed these presents, this thirtieth day of November, A. D. 1853.

JOHN PITMAN,
District judge U. S., Rhode Island district.

UNITED STATES OF AMERICA,
RHODE ISLAND DISTRICT, *sc.*

November 30th, 1853. Made service of the within by leaving a true and attested copy hereof at the last and usual place of abode of Royal Gladding and Isaac T. Proud.

CHARLES E. NEWELL,
Deputy U. S. marshal.

Fees—2 services - - -	$4 00
2 copies - - - -	1 00
travel - - - -	10
	$5 10